

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 UNITED STATES OF AMERICA,)
5)
6 Plaintiff,) No. 4:16-CR-00110-BCW-1
7) March 29, 2017
8 v.) Kansas City, Missouri
9) CRIMINAL
10 JAMES EVERETT,)
11)
12 Defendant.)

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15 JURY TRIAL TRANSCRIPT - DAY 1
16 VOLUME 1 OF 2
17 BEFORE THE HONORABLE BRIAN C. WIMES
18 UNITED STATES DISTRICT JUDGE

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20 Proceedings recorded by electronic voice writing
21 Transcript produced by computer

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1 March 29, 2017

2 (Proceedings began at 8:23 AM)

3 THE COURT: Let the Court call the case. This is
4 United States of America versus James Everett, Jr., Case No.
5 16-CR-00110.

6 Can I have parties enter their appearance for the
7 record, please?

8 MR. MCCARTHER: Jeff McCarther on behalf of the
9 United States. I'm joined at counsel table by Ms. Courtney
10 Pratten, Special Assistant United States attorney and Special
11 Agent Travis Vas from the Federal Protective Service.

12 THE COURT: Okay. Good morning.

13 MR. ERMINE: Mark Ermine on behalf of Mr. Everett,
14 Mr. Everett is with me at counsel table as well as my
15 investigator, Allen Bush.

16 THE COURT: Okay. Well, good morning.

17 A few things. Just pretrial I have to take up and
18 if there are other things let me know. First, we have a
19 motion in limine filed by the defense with respect to those I
20 guess those jail tapes that were collected. It is my intent
21 to grant the motion in limines. I don't think they are
22 relevant. I don't think -- well, let me put it this way.
23 Tape one and three, are arguably -- I don't know the
24 relevance. Tape two, I think which goes to consciousness of
25 guilt, how much time I'd get. Again, it's the Court's opinion

1 that that doesn't necessarily show consciousness of guilt, and
2 this Court's intent to grant that motion.

3 If, for some reason that matter comes up, just
4 approach the bench because these decisions aren't final. But
5 if you feel they open the door. Do you want to make a brief
6 record, Mr. McCarter?

7 MR. MCCARTHER: I believe so, Your Honor. Your
8 Honor, there are three different jail calls. And I think
9 there's only one jail call that Mr. Ermie filed a motion in
10 limine on, and that is with respect to the first call. Call
11 number one which took place on March 20th.

12 THE COURT: Which is what?

13 MR. MCCARTHER: I believe that is the one where he
14 is discussing the time he is looking at. I think that is the
15 one you are referencing.

16 THE COURT: Maybe I'm referencing that one. I know
17 one kind of went to consciousness of guilt.

18 MR. MCCARTHER: And I think that is the only one he
19 addressed in his motion.

20 THE COURT: Is that the only one you addressed Mr.
21 Ermie?

22 MR. ERMINE: It's jail call number three, Your
23 Honor, I think on the government's exhibit list. On the new
24 exhibit list --

25 THE COURT: -- give me the content of the in limine.

1 MR. ERMINE: I can play it for you.

2 THE COURT: No, just tell me. Especially when I'm
3 going in your direction. What is the content of it? What
4 does it say? Does he say, hey, I'm going to get this much
5 time?

6 MR. ERMINE: Basically, yes, Your Honor.

7 THE COURT: That stays out. Now, those other two
8 calls, you didn't object to those?

9 MR. ERMINE: I didn't object to those because I
10 didn't feel my objection was very strong to those, Your Honor.

11 THE COURT: Okay. Well, there you have it. The one
12 stays out related to consciousness of guilt related to how
13 much time he can get.

14 MR. MCCARTHER: And just so I know when I'm editing
15 these, is every statement that the defendant makes where he is
16 discussing the time that he might have to serve, specifically
17 to that.

18 THE COURT: Yeah.

19 MR. MCCARTHER: Because there are a couple of other
20 statements that he makes like, I have to bite this bullet that
21 I shot to myself, which I don't believe that goes to what
22 you're talking about. I think you're saying specific to the
23 time. Him talking about two years or three years that he
24 would have to serve.

25 THE COURT: What are you referring to?

1 MR. MCCARTHER: Throughout the course of the call
2 there are different statements that the defendant makes.
3 Towards the end of the call, the defendant makes a statement
4 to the person he is talking to is, listen, I'm just gonna have
5 to bite this bullet that I shot to myself, which I believe
6 goes directly to consciousness of guilt.

7 And the other portions that we had filed in the
8 opposition related to the defendant specifically talking
9 about, yeah, I'll have to two, maybe three years. I'll cop
10 out and take a plea if they offer me three years. I'd do
11 that. Which we believe would go directly to consciousness of
12 guilt. But I believe you are saying that's irrelevant to
13 that?

14 THE COURT: Yeah, that stays out.

15 MR. MCCARTHER: But the statement, bite this bullet
16 that I shot to myself, I don't know which way the Court was
17 leaning?

18 THE COURT: Did you all write that in your motion
19 too? I don't think I say that.

20 MR. MCCARTHER: That was in our opposition, wasn't
21 it?

22 MS. PRATTEN: Yes. Yes. And there is a portion
23 where he talks about that he would kill for his friends. That
24 was one of the clips as well.

25 THE COURT: Did you object to that?

1 MR. ERMINE: I did object to that, Your Honor. I
2 feel like that -- first of all, it's irrelevant because there
3 is no inference in the phone call that he is talking about
4 using any gun. The context of the phone call frankly he is
5 talking to his brother and he is explaining how he is closer
6 with friends than he is with family.

7 THE COURT: That doesn't come in. The fact that he
8 would kill. That doesn't come in. I don't think it is
9 relevant. And even if it relevant, I think it is highly
10 prejudicial. You know, that doesn't come in.

11 Maybe I'm totally off, maybe I'm going on memory and
12 I shouldn't. But with respect to -- I guess, you're objecting
13 to that and you are objecting to the fact that he mentioned
14 time, is that correct?

15 MR. ERMINE: That's correct, Your Honor. I think
16 that the time that he is talking about, I think that that is
17 first of all prejudicial.

18 THE COURT: I agree.

19 MR. ERMINE: Secondly, I've very concerned about
20 confusing the Jury. In terms -- because once you introduce
21 the element of what he could possibly get for punishment, I
22 think it's right for confusion of the Jury.

23 THE COURT: I agree.

24 Now, Mr. McCarther said the other thing, I think it
25 comes in. Are we clear? I just want to make sure. So any

1 time in sentencing, that stays out. The fact that, hey, I
2 would kill for my friend, that stays out, that's prejudicial.
3 But the other stuff comes in.

4 Now, if, for some reason, Mr. Ermine, you start
5 hearing something, object, we'll stop, and we'll approach,
6 okay?

7 MR. ERMINE: Yes, sir. I will.

8 THE COURT: Now, Rule 404(b), you're going to let in
9 the prior, the aggravated robbery?

10 MR. MCCARTHER: That's correct, Your Honor. We
11 filed a notice.

12 THE COURT: A long time ago.

13 MR. ERMINE: Yes, discussing that aggravated
14 robbery. And as we discussed in our pretrial conference much
15 like the Rashawn Long case, I believe --

16 THE COURT: Rashawn Long was a little different
17 factually where the underlying were slightly different.

18 MR. MCCARTHER: The underlying priors in Rashawn
19 Long, that was a drug and firearm case. We didn't even have
20 the firearm, but it involved an unlawful use of a weapon
21 conviction, trafficking conviction, murder conviction, and an
22 armed criminal action conviction. You allowed all of those
23 although we did have a limiting on the murder.

24 THE COURT: Yes.

25 MR. MCCARTHER: We did not call it a murder.

1 But in this case we have the defendant's knowledge
2 and intent in play.

3 THE COURT: Mr. Ermie says it's really not in play,
4 although you want to get in an instruction that puts it
5 totally at play. In your motion you suggest there is
6 knowledge and intent, and then you ask for an instruction that
7 puts knowledge and intent totally in play.

8 MR. ERMINE: Well, first of all, my instruction
9 dealing with intent goes to the first count and not this count
10 because I -- the intent element on the two counts quite
11 different. One being specific intent, this crime being
12 general intent.

13 THE COURT: Well, you do have an instruction that
14 seeks at or near presence of a crime does not mean one, you're
15 putting that in intent, you're trying to suggest. And so what
16 I'm saying is I think 404(b) does come in. We're not going to
17 mention aggravated robbery, we're going to limit it to show
18 that it was an offense that involved a gun. I don't know how
19 -- there is an eastern case I think -- and it's kinda like the
20 limiting instruction on the murder case. I don't think the
21 aggravated robbery, you know, the fact is he used a gun. I
22 think that goes more to -- I think the time limit, I think we
23 are fine there and when it occurred. But I don't know the
24 aggravated robbery. I think we can change that instruction to
25 show that, you know, I think you have an aggravated robbery

1 committed in Kansas where we put a crime committed with a gun
2 or something. I just don't want -- I don't think the
3 aggravated robbery is necessary. You see what I'm saying,
4 Mr. McCarter?

5 MR. MCCARTHER: I do. And my intent during trial
6 was simply read the charging language. I could excise the
7 aggravated robbery portion.

8 THE COURT: You were going to read the charging
9 language when?

10 MR. MCCARTHER: So the certified copy of the
11 conviction includes the exact charge that the defendant pled
12 to.

13 THE COURT: Yeah, but you suggest the stipulating.
14 If you stipulate to the fact that he has a prior conviction,
15 and you stipulate that is it related to -- we won't mention
16 the aggravated robbery. We stipulate to it, but we let the
17 gun portion of that obviously, then we don't get around that.
18 Because if you stipulate he has a prior, then there is no need
19 for that to come in.

20 MR. MCCARTHER: Right. And there is a stipulation
21 to the defendant's felony offense. As to 404(b) I guess just
22 want to know how we -- how do we talk about the offense
23 without mentioning that it was an aggravated robbery?

24 THE COURT: What are you trying to get into that
25 offense? Tell me where you are going?

1 MR. MCCARTHER: The charging language essentially
2 says --

3 THE COURT: Just because it's 404(b) and I let it in
4 doesn't mean that you get into every detail of that offense,
5 not to my understanding.

6 MR. MCCARTHER: That's true. The Eighth Circuit
7 precedent limits you at unless prejudicial what the offense
8 was and the charging language, that the defendant was
9 specifically convicted of, my intent was to read the charging
10 language, however, I can excise any mention of aggravated
11 robbery. However, perhaps the Court should review the
12 language I intend to read and we can figure out how to
13 approach that.

14 THE COURT: When you say reading, who are reading
15 this to?

16 MR. MCCARTHER: The witness who introduces the prior
17 would actually read. It's Count One listed on that first
18 amended information.

19 THE COURT: I guess I'm still not following.
20 Because you have a witness that is going to -- what is the
21 purpose of the witness talking about this?

22 MR. MCCARTHER: To introduce the certified record of
23 conviction.

24 THE COURT: Because you are doing that for the
25 purpose of proving that he has a prior felony?

1 MR. MCCARTHER: No.

2 THE COURT: What is the purpose?

3 MR. MCCARTHER: 404(b). For knowledge and intent to
4 possess a firearm under 404(b). We've stipulated to the
5 felony. This goes directly to 404(b) evidence.

6 THE COURT: Which allows you if I understand to --
7 in this case if all corners, talk about a prior conviction
8 that goes to knowledge and intent?

9 MR. MCCARTHER: Yes.

10 THE COURT: I understand that.

11 MR. MCCARTHER: And so my intent is to mention that
12 prior, but I need to be able to mention that it involved a
13 handgun. And I just wanted to know how the Court wanted me to
14 address that?

15 THE COURT: Well, I know you talk about the firearm
16 aspect of it. I don't want the aggravated, the aggravated
17 robbery to be used in the course of committing an offense to
18 use a firearm involved. You know, my point is it doesn't
19 matter what form we do it, I just know what I don't want you
20 to do. The substance of this is -- because I think the
21 aggravated robbery portion of this is prejudicial. I don't
22 think it needs to be -- just like in the murder case I had. I
23 just don't.

24 MR. MCCARTHER: I believe in the Long case we
25 addressed the murder by describing it as an offense committed

1 by and through the use of a deadly weapon, a handgun.

2 THE COURT: Yeah, and that was similar to the
3 language that the ACA used on the state level.

4 MR. MCCARTHER: If that's acceptable --

5 THE COURT: That's find with me. I think the point
6 is not to mention aggravated. So to the extent we can do
7 that, we do that.

8 MR. MCCARTHER: Okay.

9 THE COURT: By and through the use of a weapon, I
10 think we do it similar to that, Mr. McCarther.

11 Counsel?

12 MR. ERMINE: I just want to make sure my objection
13 remains.

14 THE COURT: What is your objection?

15 MR. ERMINE: I just want to make sure that I'm not
16 waiving even though I think the Court has proposed a solution.
17 I want to also object to Court's proposed solution just for
18 purposes of the record, and suggest that even that pair down
19 information given to the Jury, I think is still irrelevant,
20 unduly prejudicial, and does not meet the requirements of
21 40(b). Because I do maintain that it is strictly propensity
22 evidence. It goes to prove really nothing other than he had a
23 gun three years ago so he must have had a gun in March
24 of 2016. I just want to renew that objection for the record.

25 THE COURT: Yes. That will be renewed, and again,

1 for the record. The Court finds that it fits squarely within
2 404(b) in light of the case law of the Eighth Circuit.
3 Furthermore, I think in light of the instructions in which you
4 asked this Court to submit to the Jury it does go to knowledge
5 and intent. So I think that in and of itself defeats the
6 argument, but nonetheless, objection made.

7 MR. ERMINE: Thank you, Your Honor.

8 THE COURT: Anything else for the record?

9 MR. ERMINE: Your Honor, I do think that there is at
10 least one jury instruction issue that the Court should
11 consider taking up prior to the Jury coming in.

12 THE COURT: What's that?

13 MR. ERMINE: Because the question as to what the
14 elements are of the threatening a law enforcement officer
15 count. Those are going to be read to the Jury as part of the
16 preliminary instruction.

17 THE COURT: Maybe, maybe not. Can I stop you there
18 because I can just short-circuit this a little bit quicker
19 probably?

20 MR. ERMINE: Yes, sir.

21 THE COURT: Why are we reading that? I have never
22 done that. Why am I reading the instructions on the elements
23 in the prelims? I don't feel the need to. Now you can make
24 your objection, but I don't think I going to. Because that is
25 an issue we need to take up in terms of the elements. You

1 don't have to say anything further, I already made my ruling.
2 I don't think there is -- why are we reading that up front? I
3 think as I explain the crime, Mr. McCarter, I am going to
4 use -- did I get a statement on the case from you all? I
5 think what I'm going to use is the charges itself. Which it
6 doesn't give the elements, but it talks about the offense. I
7 think the elements, especially when there as issue on that
8 right now, I would probably be more inclined if I resolve that
9 issue in my head with the elements, but I haven't, and because
10 I have never done that necessarily before, I don't think it is
11 necessary that I read that to the Jury at this point in time,
12 but be read to the Jury at the time that we submit the case.

13 MR. ERMINE: Very well, thank you.

14 MR. MCCARTHER: One final issue to take up and I
15 mentioned this at our pretrial conference. The United States
16 moves to dismiss Count Three of the indictment. We're not
17 intending on presenting any evidence and the evidence
18 regarding that count has been suppressed anyway by the Court's
19 order. And so the United States formally moves for a
20 dismissal of Count Three which is a possession of a controlled
21 substance offense.

22 THE COURT: Noted for the record. Anything else?

23 MR. ERMINE: No, sir.

24 THE COURT: All right. We're going to get the Jury
25 up.

1 Let me tell you guys, and this is not why, maybe a
2 little bit why. We'll see how this plays out when we get the
3 Jury picked. I have a -- I'm on a panel. How did that work
4 out? At 12:00. It doesn't mean -- I'll make it on time. I
5 told them I could be late, but hopefully I'll get the Jury all
6 seated, then I'll break them for lunch, and then that will be
7 the time I do what I have to do and then we'll come back.
8 Typically -- but it shouldn't interfere with this is my point.

9 Now, are we anticipating two days, like today and
10 tomorrow?

11 MR. MCCARTHER: Yes, Your Honor.

12 THE COURT: All right. Okay. Anything else?

13 MR. MCCARTHER: And by what you just said is the
14 expectation that we open after lunch?

15 THE COURT: Yes. We always -- because we are going
16 to keep the Jury here, break for lunch which I always do, and
17 then we will read the instructions and open after lunch.

18 MR. MCCARTHER: Thank you, Your Honor.

19 THE COURT: Okay. We'll get the Jury up just as
20 quickly as we can and we'll get going here shortly.

21 (THEREUPON; Voir Dire was conducted by the Court and
22 counsel.)

23 THE COURT: Let's go on the record. We have
24 plaintiff's preemptively strikes is Juror 7, 14, 20, 22, 27,
25 and 34. And your alternate strike was 37.

1 Defendant's peremptory strikes are 8, 9, 11, 15, 17,
2 21, 23, 24, 26, and 30. And the alternate is 36.

3 With that said, it looks like our final, our Jury is
4 made up of Juror 1, Juror 3, Juror 5, Juror 6, Juror 12, Juror
5 16, Juror 19, Juror 28, Juror 29, Juror 31, Juror 32, Juror
6 33, and the alternate is Juror 38.

7 Does that conform with what the parties have?

8 MR. MCCARTHER: Yes, Your Honor.

9 MR. ERMINE: Yes, Judge.

10 THE COURT: Okay. All right. We'll get the Jury in
11 and then I will discharge the others.

12 (THEREUPON, the jury enters the courtroom;
13 WHEREUPON, the following proceedings were had in the
14 presence of the jury.)

15 THE COURT: Okay. I'm going to speak to the jurors
16 in the gallery. As you can see we have our jury panel so that
17 means you are not impaneled to sit on this case. And I want
18 to thank you for your service today. Without your attendance
19 and your participation in the process our system wouldn't
20 work. But at this time you are excused as jurors. If, for
21 some reason, you need some written excuse you can go back to
22 the second floor. But with that said, thank you again for
23 your participation and service, but you are free to go at this
24 time.

25 (THEREUPON; Voir dire panel exited the courtroom.)

1 THE COURT: Ladies and gentlemen of the Jury, what
2 we're going to do is to take a recess for lunch. We will take
3 probably about 55 minutes. So I want to get started about
4 about 1:30. There is a place to eat here. If you have any
5 questions about where to eat, you can ask Mr. Baldwin. When
6 we do recess, she will show you where the jury room is and
7 where you are to report in the morning.

8 When we get back and start what will happen is I
9 will read some instructions to you and the law to follow in
10 the case. Then the attorneys will have the opportunity to
11 argue -- not argue, is to give their opening statements on
12 what they believe the evidence will show. And then we will
13 start evidence at that time.

14 With that said, we will recess. The Court again
15 reminds you of what you were told at the first recess of the
16 Court. Until you retire to consider your verdict you must not
17 discuss this case among yourselves or with others or permit
18 anyone to discuss it in your hearing. You should not form or
19 express any opinion about the case until it is finally given
20 to you decide.

21 (THEREUPON, the following proceedings were
22 adjourned.)

23 THE COURT: Okay. We'll get the Jury in and get
24 started.

25 (THEREUPON, the jury enters the courtroom;

1 WHEREUPON, the following proceedings were had in the
2 presence of the jury.)

3 THE COURT: Welcome back.

4 Our first order of business is to have you all stand
5 and raise your right hand and be sworn in as jurors on this
6 case.

7 (THEREUPON; the Jury was sworn by the Court.)

8 THE COURT: Thank you. You can have a seat. Just a
9 few comments. Again, we'll take a break probably every hour
10 and 15 minutes to hour and a half. Typically, we won't go any
11 longer than that. Also -- I just lost my train of thought.
12 It will hit me later.

13 What we are gonna do now is the Court is going to
14 read to you the instructions, the submitted instructions. The
15 attorneys will have the opportunity to make their opening
16 statements, and then the government will begin their evidence.

17 There may be a short break in between. We are
18 having some technical difficulties and the government needs
19 that for their first witness, so we may have to probably stay
20 here in court while they switch out some cables and we will go
21 with it.

22 And will tell you at times there maybe and I'll read
23 this to you also, when we are at the bench. If you have been
24 sitting down awhile and you want to stand and stretch while we
25 are talking, feel free to do so.

1 With that said the Court will read to you
2 instructions.

3 (THEREUPON; Instructions were then read in open
4 court to the Jury by the Court.)

5 THE COURT: I just remembered what I failed to
6 remember and so I do want to say it. In terms of your cell
7 phones, did you all get your cell phones back? So you do have
8 them, good. That's what I forgot.

9 With that said, Counsel for the government, would
10 you like to proceed, Mr. McCarter?

11 MR. MCCARTHER: Yes, I would, Your Honor.

12 THE COURT: Okay.

13 MR. MCCARTHER: Give me a moment.

14 Good afternoon, ladies and gentlemen. My name is
15 Jeff McCarter as I have said before. I am joined at counsel
16 table by special assistant Ms. Courtney Pratton, also Special
17 Agent Mr. Travis Vas of the Federal Protective Service, and
18 Ms. Allyson Beyer, who is a paralegal in the office of the
19 United States Attorneys.

20 Now, before I get going with my opening statement
21 let me first say thank you to all of you for your service here
22 today. I know that this could be a burden, sitting in a
23 courtroom for two days straight. You are away from your
24 friends, your family, your job, but believe me when I tell you
25 that everyone in this courtroom does appreciate it. So I just

1 wanted you to know that.

2 Now, this is my opening statement. This is my
3 chance to tell you what I expect the evidence is going to be.
4 What you are going to see. What you're going to hear. And
5 what I think you should take away from this.

6 Now, as the prosecutor I have the burden in this
7 case. It is the burden of reasonable doubt. I need to prove
8 this case to you beyond a reasonable doubt. I am comfortable
9 with this burden. I am very comfortable with this burden
10 because of the evidence you are going to see in this case. It
11 was based on the evidence that you are going to see that I
12 have charged Mr. Everett with two federal crimes. That is
13 threatening a federal law enforcement officer and being a
14 convicted felon in possession of a firearm.

15 Now, let's jump into the story of this case. About
16 I'd say three blocks from here at the Richard Bolling federal
17 building. This is the building at 601 East 12th Street.
18 Richard Bolling federal building, and let me describe this
19 building. It's about 18 stories high, it is about two blocks
20 wide, it is a massive building. And in fact, it houses almost
21 3000 individuals a day. We are talking about a dozen
22 different federal agencies. We've got a cafeteria, a credit
23 union, a US Post Office, and there is even a daycare center
24 for the employees to drop their children off. And as you
25 might have guessed, being a big federal building with multiple

1 federal agencies there are significant security protocols at
2 play at this building. For instance, you cannot park
3 alongside the federal building unless you are an emergency
4 vehicle. Only police officers and other law enforcement
5 officers, and ambulances and fire trucks and stuff like that
6 are able to park. There are signs that say emergency vehicle
7 parking only. Obviously, you don't want just random cars
8 parking up against a federal building. When you walk into the
9 lobby there are private contract security guards to walk you
10 through metal detectors to check IDs. They are there to
11 generally keep the peace in the building and to make sure that
12 everyone whose coming in is supposed to be there for a
13 specific reason.

14 Now, let's talk about another set of law enforcement
15 officers that are in the building. That building also is the
16 headquarters for the Federal Protective Service in Kansas
17 City. Now, the Federal Protective Service is in charge of
18 protecting not only the buildings, the federal offices
19 themselves, but the occupants inside of them. So any issue,
20 any disturbance, any crime that takes place on federal
21 property, Federal Protective Service officers have
22 jurisdiction, they fall under the Department of Homeland
23 Security. Now, they are going to play an important role in
24 this case.

25 But let's jump to the story of this case. March

1 10th, 2016, it's approximately 8:30 a.m. and the defendant
2 pulls up in front of the federal building where it says
3 emergency vehicle parking only. He parks, he is driving a
4 2007, silver Dodge Caliber. He is the only occupant of the
5 car. He gets out of the car and he goes inside. You will see
6 surveillance of him parking, you will see surveillance of him
7 leaving his car and going inside.

8 The first witness you are going to hear from is one
9 of those contract security officers I spoke of. PSO Joseph
10 Foderaro. He was working that morning. And as he is
11 escorting people in, going about their daily routine,
12 Mr. Everett walks in and he could tell -- Joseph Foderaro
13 could tell something was a bit off. The defendant was looking
14 around. He appeared agitated, angry, and he Joseph Foderaro
15 and he heads right towards him. Here's what he asks him, he
16 says, I need to speak to a federal judge. Now, this is odd?
17 Right? But for a couple reasons. One, there are no federal
18 judges in that building as you might have guessed. They are
19 here. They are here in this building. But the impression
20 that Joseph Foderaro got was this guy was angry, this guy was
21 agitated, and he thought that there might have been -- that he
22 might have been on something, he wasn't sure. But the other
23 PSO officers, they tell him, sir, one, there are no federal
24 judges here, but you have to leave. He was causing a
25 disturbance, he was shouting at the top of his lungs about his

1 need to see a federal judge. And so Mr. Mr. Everett turns and
2 he walks out of the building.

3 Now, the PSOs see Mr. Everett turn and walk out of
4 the building and go to a car that is parked alongside the
5 federal building. Now, up to this point this is a man who had
6 come in, caused a disturbance, asked to see a federal judge,
7 and he had his car parked alongside a federal building. So
8 what is the first thing they do? They call up to the FPS
9 officers who are on the second floor in headquarters. Four
10 FPS officers respond downstairs to the lobby and they go
11 outside. Well, Mr. Everett has opened his car door but he
12 hasn't gone inside. He is now in the street yelling in the
13 direction of the building, he is yelling at people passing by,
14 and the FPS officers have stepped outside and they are saying,
15 sir, if everything okay? Mr. Everett sees those officers and
16 the first thing he does is he looks directly at FPS officer
17 David Wright. You're going to see the surveillance footage of
18 this moment. He looks at David Wright, of the four of these
19 people, and he does a beeline right towards him. And you'll
20 see him walking really fast, fits clinched, right up to David
21 Wright. To the point where David Wright starts backing up,
22 puts his hand on his taser, the guy keeps approaching. He
23 pulls his taser out and aims it low. Mr. Everett finally
24 stops in front of him. Now, what Mr. Everett was saying as he
25 was approaching to other Federal Protective Service Officers

1 was I'm going to kick your asses. I'm going to kick your
2 asses. To David Wright, to FPS Officer David Wright, he says
3 I'm going to kill you. And after David Wright had pulled out
4 his taser telling Mr. Everett to stop where he was,
5 Mr. Everett looks at him dead in the eye and he says, I'm
6 going to blow your fucking head off.

7 So sensing that there was a fight about to take
8 place, that Mr. Everett was not going to be calmed down,
9 another Federal Protective Service officer takes Mr. Everett
10 by the arms in an attempt to place him in cuffs for his safety
11 and the officer's safety. Mr. Everett does not want to be
12 taken, did not want to be handcuffed, and so now he is trying
13 to pull his arms away. And now other officers are saying,
14 stop, please stop. Eventually this makes its way to the
15 ground and now they are wrestling around.

16 You can going to hear from two of the Federal
17 Protective Officers, not only David Wright, but you're also
18 going to be hearing from SPF Officer Schwarz, who was there
19 that day and participated in this confrontation.

20 And to be clear, these threats were taken very
21 seriously. When they're on the ground wrestling around trying
22 to get control of Mr. Everett's hands a kind of panic happens
23 when Officer Schwarz and Wright see the defendant start to go
24 for his waistband. Now this is a problem. They are trained
25 to watch for this. They are trained to keep people's hands

1 away from their clothing, away from their pockets, away from
2 their waistbands. Finally, two other Kansas City Police
3 Department officers who had happened to just be walking by
4 come running over. They engage with the defendant too. It
5 takes six officers to finally get the defendant restrained and
6 in handcuffs. Six officers. The two KCPD officers are
7 detectives with the KCPD. They are detectives Bailey and
8 Detective Watt. You will hear from them and what they saw and
9 participated in that day.

10 Finally, the defendant is placed in handcuffs and
11 because of this man's behavior, because they were not sure if
12 he was on something, why he was so agitated, police protocol
13 dictated that he get him an ambulance first before he is taken
14 into custody. So an ambulance is called. You will see the
15 entire 16 minutes surveillance video. From the time Mr.
16 Everett turns, engages with FPS Officer Wright, until the time
17 he is loaded into an ambulance. Before he is loaded into an
18 ambulance there are people trying to talk with him. There are
19 people trying to keep him from rolling around. He is biting
20 at them, he is spitting at them, he is doing everything he can
21 to hurt them. David Wright suffered injuries. He will tell
22 you about those injuries that he suffered taking down Mr.
23 Everett.

24 Now, remember after Mr. Everett is loaded up into an
25 ambulance there is still his car parked there. He is parked

1 in an emergency vehicle parking only. This was a problem.
2 This car needed to be towed, because for one, it is illegal to
3 park there. But, two, there is obviously -- this car has been
4 abandoned. It has been pointed out that he was the guy that
5 drove there and obviously he is not going to be moving his car
6 anytime soon. Officers Watt and Bailey ordered the car towed.
7 Now, before any car is towed they do what is call an
8 inventory. Some of you might be familiar with this. An
9 inventory is essentially taking an accounting of the items
10 that are in your car. It is a liability issue for the KCPD.
11 They are required to do it anytime they tow because if someone
12 goes to the tow lot, they can't suddenly knock on KCPD door
13 and say that \$10,000 diamond necklace I had in there it's
14 missing now, it's your fault and you lost it. So before they
15 tow everything they have to write down everything that is in
16 that car that is of some value.

17 Now, remember when I said that the FPS officers had
18 to wrestle around with Mr. Everett. That he went for his
19 waistband. They checked him for weapons, there were no
20 weapons around his waistband. Under the front seat of the car
21 he drove there was a 9 millimeter Ruger P95. And they did a
22 criminal history check on Mr. Everett and realized he had a
23 prior conviction for what is called a felony. A crime
24 punishable by more than imprisonment for over one year. This
25 is a federal crime. If you have been convicted of a crime

1 punishable by over a year in prison you are not allowed to
2 possess a firearm. No if, ands or buts.

3 Now, as Detective Watt is inventorying this car he
4 sees in the backseat a car seat, a baby seat. And so they
5 looked up the registration of the vehicle and it comes back to
6 somebody named Ms. Tiara Gray. Now, you are going to know
7 about this person because this is the girlfriend of the
8 defendant. They are together. Detective Watt calls Ms. Gray
9 and says your car has been towed, do you want me to bring this
10 baby seat back to you? She says, yes. She confirms that Mr.
11 Everett had been driving her car. At that point Detective
12 Watt takes the car seat back to Tiara and she again confirms
13 that Mr. Everett had possession of her car at that point.

14 Now, remember Mr. Everett is in the hospital right
15 now. Once he is finished at the hospital, he is to be taken
16 into police custody. But there is a problem with this. There
17 wasn't a KCPD officer who was able to get to the hospital upon
18 his release. Mr. Everett is released at 2:00 a.m. March
19 11th, and there is not officer to take him into custody. Mr.
20 Everett presumably goes home. The next day we charge Mr.
21 Everett in federal court and Detective Watt and Bailey
22 effectuate that arrest, and Mr. Everett is taken into custody
23 on March 11th, of 2016.

24 Now there are two additional important witnesses
25 that I'm going to have to discuss. One is KCPD Detective

1 Frank Rorabough. He is a 16 year veteran of the Kansas City
2 Missouri Police Department. He is on the illegal firearm
3 squad. It is likely that had this incident not happen on
4 federal property that he would've been the lead detective on
5 this case. But what he is going to tell you about is related
6 to that question that I brought up earlier. CSI, NCIS, this
7 DNA evidence. He is going to tell you from his experience, he
8 has probably sent what he estimates 400 or 500 firearms for
9 fingerprint and DNA analysis. He is able to get actual hits
10 on DNA only maybe one in ten. And so this is why this
11 question is asked to try and tell you what the expectations
12 are. One in ten do you ever get a DNA hit on a firearm. Do
13 you know what the percentage is of actual fingerprints coming
14 up on firearms that are analyzed? Of the 400 to 500 that
15 Detective Rorabough has had to analyze at the KCPD crime lab,
16 zero. Not a single firearm has ever come back with a viable
17 fingerprints. And so he is here because there is no DNA,
18 there is not fingerprint evidence in this case. In fact, what
19 he is going to tell you, is that in this type of case, the
20 KCPD crime lab wouldn't even have analyzed this gun. And so
21 this is the evidence that we have.

22 And you are going to hear from an eighth witness and
23 that is Special Agent Travis Vas. He is familiar with the
24 defendant's criminal history. And one of -- there is a
25 certified prior conviction in which we will present in this

1 court from May 5th, 2009, and that was for an offense
2 committed by and through the use of a deadly weapon from 2009.
3 And that deadly weapon was a handgun.

4 Now, last and final you are going to hear from a
5 ninth person. I'm not gonna call him as a witness, but this
6 ninth person will be the defendant himself. Now, as I told
7 you on March 11th, the defendant was taken into custody. As
8 he was detained, and some of you may know this, your phone
9 calls may be recorded and stored. There is a message before
10 you make any outgoing phone call that this phone call may be
11 monitored and recorded.

12 So Special Agent Vas went through all the phone
13 calls from the first 90 days of Mr. Everett's detention and he
14 has picked three for us to pick today. And we have clipped
15 them together. We have one from March 20th, where the
16 defendant appears to be talking to his brother. And he says
17 quite a few things. He recounts the incident. Yeah, the
18 pistol wasn't on my hip, it was in the car. I'm not worried
19 about them charging me, because I don't want to follow the
20 guidelines or the rules of this country. Regarding his action
21 that day, yeah, that might've been a stupid move. Regarding
22 Officer Wright pulling out his taser. Do you remember that?
23 Here's what he says he said to Officer Wright. I'm going to
24 hit you in your mouth, then I'm going to blow your mother
25 fucking brains out. That's what he recounts to his brother

1 about what he told Officer Wright. Regarding his charges he
2 says, I'm just going to have to bite this bullet that I shot
3 to myself, and it's my own damn fault that I am in here.

4 We had a second call from April 20th, taking place
5 approximately 40 days after the incident. He is speaking with
6 his girlfriend, Ms. Tiara Gray. And he is going over his
7 charges and he is saying, they charged me with possession of a
8 firearm, but they made a mistake, they should have charged me
9 with constructive possession of a firearm because the gun
10 wasn't on me, the gun was in the car. My gun was in the car.
11 And so -- and by the way, that is legally not accurate,
12 constructive possession is possession. That's the difference
13 between this pen that I have direct possession of, and if I
14 ran down to my car, put it in the car and came back, I'm still
15 in possession of this pen, right? Because I still have access
16 to it because it is still in my car. That will be the
17 difference we hit more at closing.

18 We have a third call from April 30th, this is 50
19 days after the incident. And he is again talking with
20 Ms. Gray and they start to talk about these charges. And
21 Mr. Everett says the following, hint, hint, hint, hint, who
22 did you let borrow your car the night before. She says,
23 nobody. And he says, you know, for being so intelligent you
24 don't know the game. Here's what I need you to do. Start
25 looking at the news and reading articles. The next guy that

1 you see in news that gets caught, that's the guy who had it.
2 So you need to let me know who you're going to say so I can
3 know who I'm going to say. That is the defendant's own voice.

4 Here is what I'm gonna say, the defendant committed
5 these crimes. He is guilty of these offenses. And this
6 evidence is not complex. And as it is presented all I ask of
7 you right now is that you look at it through the filter of
8 common sense. What makes sense in this case? And as I said
9 before I'm going to speak to you one last time. There is
10 going to be two closing arguments. First, Ms. Pratton will
11 make a close, the defense attorney will make a closing
12 argument, and then I will be the last person to get to speak
13 with you during the second closing argument. And I will make
14 a request at that time and that's that you find the defendant
15 guilty of all counts. Thank you very much.

16 THE COURT: Thank you, Mr. McCarther.

17 Mr. Ermine?

18 MR. ERMINE: May it please the Court?

19 THE COURT: It may.

20 MR. ERMINE: Good afternoon, again, everyone. My
21 name is Mark Ermine. I represent Mr. Everett in this case. I
22 want to echo the government's attorney. Thank you for being
23 here. It is incredibly important that you all are here. And
24 we very much appreciate you giving up your time to pay close
25 attention to the evidence in this case.

1 I expect that over the next couple of days you are
2 going to hear from quite a few witnesses. Government's
3 counsel just kind ran down the evidence. I don't want to tell
4 the same story twice, but let me reiterate some of the points
5 that I think are particularly important for you all as you are
6 paying attention to the witnesses and listening and watching
7 all of the evidence in this case.

8 The evidence is going to show that Mr. Everett went
9 to the federal building that day. The evidence is going to
10 show that he was looking for a federal judge. You are going
11 to hear in some of these phone calls that counsel mentioned
12 that Mr. Everett was looking to file some sort of motion.
13 It's sounds as if he just mistakenly thought that the federal
14 judges were at the federal building instead of being here.
15 More importantly though, right when he got to the federal
16 building that day, something was clearly off. Every witness
17 who was there is going to agree with that. Everyone who saw
18 him right from the moment he arrived is going to testify that
19 he was acting erratically might be too soft of a word. He was
20 yelling at people. He was cursing and screaming at people.
21 People in the street, passers by, he is generally acting
22 bizarrely. When he goes into the federal building, I think
23 that one of the witnesses is going to testify, he was even
24 slapping himself in the face. Something is clearly not right
25 with Mr. Everett on March 10th, 2016. So he does, he leaves

1 the lobby and then the Federal Protective Officers come out.
2 And Mr. Everett comes back. They see him away off and he
3 comes back. Same thing is happening. He is out in the
4 street. Yelling at people, screaming, cursing, still acting
5 quite strangely. As he is walking back up to the offices he
6 is muttering to himself. I think the testimony will be that
7 he is muttering threats under his breath, muttering curses and
8 swearing under his breath.

9 The officers are justifiably quite concerned about
10 his state of mind. So at this point Mr. Everett gets back up
11 to where the officers are and there is a bit of a skirmish
12 between him and the officers. They ultimately do detain him.
13 You'll see all of this on video. I don't need to go through
14 the details. Government's counsel mentioned him reaching for
15 his waistband, you know, you can draw your own conclusions
16 based on the video. I ask you to watch that video quite
17 carefully and see whether or not it actually matches up with
18 these details that the government's witnesses give you. But
19 be that as it may, the officers are detaining him. He is
20 ultimately restrained on the ground. He continues to act
21 strangely once he is detained. He is detained, by the way, by
22 six officers. It takes six officers to detain. I think that
23 some of the officers are going to testify about perhaps why it
24 would've taken six officers to detain him. At any rate, once
25 he gets on the ground you'll see on the video and the officers

1 are going to testify, that he is banging his head on the
2 concrete at least twice. Something is clearly not right with
3 Mr. Everett that day.

4 The officers knew that something wasn't right with
5 him, that's why instead of being taken to the jail he is taken
6 by ambulance to Truman. You're going to see on the video that
7 the EMTs arrived. I expect you're going to hear testimony he
8 was threatening the EMTs. He was generally threatening
9 everyone that day. He is ultimately taken by ambulance to
10 Truman. You're going to hear from one of the FPS officers
11 that went with him to Truman. And was in the hospital room
12 with him. At the hospital room in the hospital Mr. Everett
13 continuing to act very strangely. He is still yelling and
14 cursing and threatening everyone. He is threatening nurses
15 and he is threatening EMTs, he is threatening the security
16 staff at the hospital, he is even threatening the doctors who
17 are trying to treat him. You are going to hear about how is
18 ultimately sedated and things like that at the hospital and
19 I'll talk more about that in closing.

20 So you have just heard me talk about how Mr. Everett
21 -- you know, Mr. Everett is charged with threatening of
22 federal law enforcement officer. I'm going to tell you he is
23 not guilty of that charge. But you just heard me talk about
24 how he was threatening everybody that day. And that's
25 something that is very important to remember about this case.

1 The government has to prove that Mr. Everett was threatening
2 those federal law enforcement officers because they were
3 federal law enforcement officers involved in their official
4 duties. But as I said, the evidence is going to show that
5 Mr. Everett was indiscriminately threatening everybody within
6 earshot. Everyone he saw, passersby on the street. His state
7 of mind is very important.

8 I submit to you that at the end of the case I think
9 it will be clear, he didn't threaten these officers because
10 they were federal officers engaged in their official duty, he
11 threaten them because they happened to be there just like he
12 threaten everyone else that day. And for that reason he is
13 not guilty of threatening federal officers.

14 I want to talk about this second count. While he is
15 at Truman as government counsel says, they end up searching
16 this car and they find the gun under the front seat. Now, he
17 is charged what knowingly possessing that firearm. But there
18 is no physical evidence that is going to be presented to show
19 that he possessed that firearm. You are not going to hear
20 about any DNA evidence. You're not gonna hear about any
21 fingerprint evidence. You are going to hear from a witness
22 whose only purpose is to testify about why they don't have
23 that evidence. But you're not going to actually hear that
24 evidence. There is going to be no evidence presented that
25 Mr. Everett actually knew that gun was there.

1 Government's counsel mentioned these phone calls. I
2 do want you to pay very close attention to those phone calls.
3 Obviously, you know right now that those phone calls were all
4 made after Mr. Everett knew what he was charged with. You are
5 going hear portions of those phone calls where there is a
6 discussion between Mr. Everett and the other person on the
7 phone about news articles. And so you're going to hear
8 essentially that Mr. Everett has certain information about the
9 case via news articles. So I want you to pay very close
10 attention to those phone calls and discern what is being said
11 and what is not being said.

12 At the end of the day though or I should say by the
13 end of the day tomorrow you will not have heard any evidence
14 that Mr. Everett was seen with the firearm. You will not see
15 any physical evidence presented in this case that Mr. Everett
16 knew that there was a firearm under the seat of that car that
17 he was driving. And as the government's counsel just told you
18 will have heard evidence that the car was registered to
19 somebody who is not Mr. Everett.

20 After considering the lack of the evidence in this
21 case, recognizing that there is no evidence showing that
22 Mr. Everett knew that that firearm was there, I will ask you
23 to render a verdict of not guilty on that count. I'm going to
24 ask you to find Mr. Everett not guilty of both counts in this
25 case because he did not threaten a federal law enforcement

1 officer because that person was a federal law enforcement
2 officer. He threaten everyone that day. Keep in mind his
3 state of mind and there is going to be evidence about that.

4 He is not guilty of possessing this firearm. There
5 is no evidence that he knew that there was a firearm in the
6 car that day. Thank you very much.

7 THE COURT: Thank you, Mr. Ermine.

8 Ladies and gentlemen of the Jury, we're going to
9 take just a quick recess. I ask that you stay in the jury
10 room. We are going to have the person come up from IT to work
11 on the TV. We anticipate that it won't be long and then we
12 will get right back here and the government will start with
13 their evidence. And we will recess at this time.

14 (THEREUPON, a short recess was had; WHEREUPON, the following
15 proceedings were had.)

16 THE COURT: Okay. Ladies and gentleman of the Jury,
17 I apologize for the long delay. We promised you that it was
18 working properly, but we have had some technical difficulties.
19 What I failed to mention is that we will go no later than past
20 5:00 in the evening so you can plan accordingly. Even when go
21 to deliberate, we will never go after 6:00. So you all can
22 plan accordingly.

23 With that said, government, call you first witness.

24 MS. PRATTEN: Thank you, Your Honor. The government
25 calls Protective Service Officer, Joseph Foderaro.

1 THE COURT: Okay. Sir, if you can come forward and
2 raise your right hand to be sworn by my courtroom deputy.
3 Thank you.

4 JOSEPH FODERARO

5 Called as a witness on behalf of the PLAINTIFF, was
6 duly sworn, and testified as follows:

7 THE COURT: Thank you, Officer. You can come up
8 here, and watch your step as you come up. Counsel.

9 DIRECT EXAMINATION

10 BY MS. PRATTEN:

11 Q Good afternoon. Can you go ahead and state your name
12 for the Court, please?

13 A Joseph Michael Foderaro the 3rd.

14 O Okay. And you are a Protective Service Officer?

15 A Yes, ma'am.

16 Q Okay. And who do you work for?

17 A company called VTSGI?

18 O What kind of company -- did you say FTSGI?

19 A VTSIGI. It is a contracted security company.

20 Q Okay. So you are a Protective Service Officer with
21 VTSgt?

22 A That's correct

23 Q Okay. And who does VTSGT contact with?

24 A We contract with the federal government

25 Q Various federal buildings?

1 A Yes, ma'am.

2 Q Just in Kansas City?

3 A No, we also do St. Louis I believe. And then we also do
4 some outlying areas in Des Moines and in Wichita, Kansas.

5 Q Okay. So is one of the buildings they contract with the
6 Richard Bolling federal building?

7 A That's correct.

8 Q And where is this located?

9 A It is located at 601 East 12th Street.

10 Q Downtown Kansas City, Missouri?

11 A Yes, ma'am.

12 Q And approximately where is that building in relation to
13 this building?

14 A I would say a couple blocks south.

15 Q Is this where you are assigned specifically to work
16 security?

17 A Yes, ma'am?

18 Q How long have you been providing security for the
19 Bolling building?

20 A I've been providing security for that building for about
21 18 months now.

22 Q Now, let's talk a little bit about your job as a
23 protective service officer. What kind of training did you
24 undergo to become a protective service officer?

25 A This is different types of training that we undergo.

1 We do OC baton training, we do self aid training, we do heart
2 start, ADT training, we do x-ray and walk-through magnetometer
3 training for visitor screening.

4 Q Okay. And did you have initial training period before
5 you started?

6 A Yes, I did. It was about three and half weeks.

7 Q Okay. And then do you have periodic refreshers as well?

8 A Yes, ma'am.

9 Q Okay. Do you train on a weapon or have you trained on a
10 weapon?

11 A Yes, we do. I am trained on a 40 caliber Smith & Wesson
12 and we had initial training with that firearm at the very
13 beginning in our training period. And the every five months I
14 do a refresher training with the firearm and then every year I
15 am trained with KCPD as well.

16 Q Okay. And what is that kind of training with KCPD?

17 A It is a four hour class. For the first three hours or
18 so it is more of like a classroom, firearm safety. And then
19 the last half of the class is where you actually go out and
20 you fire the course, course of fire to see if you can qualify
21 with the weapon.

22 Q And just to kind of spell everything out. KCPD, Kansas
23 City Police Department, is that correct?

24 A That's correct.

25 Q Okay. Let's talk a little bit about the Bolling

1 building where you work.

2 MS. PRATTEN: Permission to approach, Your Honor?

3 THE COURT: Yes.

4 BY MS. PRATTEN:

5 Q I'm going to go ahead and hand you what has been
6 previously marked as Governments Exhibit 4. What is that that
7 I just handed you?

8 A This one right here?

9 Q Well for the moment you can talk in the mic?

10 A This is a photo of the Richard Bolling Federal Building.

11 Q From overhead?

12 A Yes, ma'am.

13 Q Okay. Does that picture fairly and accurately represent
14 the Richard Bolling Federal Building and immediate
15 surroundings as you recall them on March 10th, 2016?

16 A Yes, it does.

17 Q And to be clear was this photo, this photo wasn't
18 necessarily taken on that day, right?

19 A Yes, that's correct. It wasn't taken on that date
20 specifically.

21 Q Okay. But it represents the scene as you recall it that
22 day?

23 A Yes.

24 Q Would this demonstrative aid assist you and your
25 testimony as you talk to us today?

1 A Yes.

2 MS. PRATTEN: Your Honor, I move to admit into
3 evidence what has been previously marked as Government's
4 Exhibit 4.

5 MR. ERMINE: No objection.

6 THE COURT: Government's Exhibit 4 shall be
7 admitted.

8 (THEREUPON; Government's Exhibit No. 4 was then
9 admitted into evidence by the Court.)

10 MS. PRATTEN: May I have permission to publish that,
11 Your Honor?

12 THE COURT: You may.

13 BY MS. PRATTEN:

14 Q And what I will ask you to do is if you can step around
15 from the stand and take the microphone with you and the
16 pointer that I handed you. And I'm going to ask you to
17 identify a few of the locations that we talk about by putting
18 the pointer on that location.

19 THE COURT: Let me ask you, can the Jury see? Can
20 you see that find? If you guys are fine then I'm okay. Is
21 that's probably the best in light of everything.

22 THE WITNESS: Is this better?

23 THE COURT: Yes, thank you.

24 BY MS. PRATTEN:

25 Q Okay. On this photograph can you go ahead and point out

1 where the Richard Bolling Federal Building is? Draw a circle
2 around it with the laser?

3 A The building is -- it would be right here. This is the
4 main building.

5 Q Okay?

6 A Yeah, that's the main building right there. That's 12th
7 Street, there's the lobby and then there is the other lobby
8 right there.

9 Q So you said 12th Street is a street right above it
10 near the top of the drawing?

11 A That's correct. This is 12th Street right here.

12 Q Okay. And you said the lobby is right in front of kind
13 of that large white object which is the federal building?

14 A Yes, ma'am.

15 Q And there are a number of vehicles that seem to be
16 parked on 12th Street immediately to the left of the Bolling
17 Building, is that correct?

18 A Yes, ma'am. Right here?

19 Q Yes?

20 A Yes.

21 Q Is that a parking lot in that area?

22 A Now, ma'am. That is not a parking lot. It is a marked
23 emergency vehicles only.

24 Q Okay. Thank you. You can go ahead and return to your
25 seat now, thanks.

1 So let's focus a little more in on the morning of
2 March 10th, 2016. What is your normal shift?

3 A My normal shift is I work Thursdays and Fridays, 0530 to
4 1830. And then on Saturdays 0530 to 1800.

5 Q Okay. And were you working the morning of March 10th,
6 2016?

7 A Yes, I was.

8 Q Specifically around the hour of 8:30 to 9:30 a.m.?

9 A Yes, ma'am.

10 Q And what duties were you performing at approximately
11 that time?

12 A I was the head entry security guard. I was working the
13 lobby at the time and greeting visitors as they came into the
14 building.

15 Q Okay. So you were working at the 12th Street entrance
16 to that building?

17 A That's correct.

18 Q Okay. In the lobby? And you said you were the head
19 individual at that time?

20 A Yes, ma'am. The point PSO.

21 Q So how many other individuals were working there that
22 morning?

23 A There was myself and three other security guards working
24 at that time.

25 Q Okay. And what specifically were you doing.

1 A I was greeting visitors as they came into the building.
2 And I was directing individuals to either be screened if they
3 were a visitor or to come on into the building if they had a
4 federal ID.

5 Q Okay. So does everyone who enters that building at that
6 entrance need to show an ID?

7 A That's correct.

8 Q Okay. And my understanding from your testimony is that
9 there is one of two ways that they can enter, right?

10 A Yes, ma'am.

11 Q So the screen you talked about, what is that?

12 A The visitor screening it is very similar to what people
13 come through if they are coming to this building. There is an
14 x-ray machine, we ask them to empty their pockets of any metal
15 items, and they put their objects onto the belt of the x-ray
16 machine, we scan the items, and then the individual also walks
17 through a walk through a walk through metal detector to make
18 sure that there are no items on them that alarms. If they do
19 alarm me, they do a secondary screening with the hand wand.

20 Q Okay. And this is the entrance of someone I think you
21 said does not have a federal ID, right?

22 A That's correct.

23 Q So this would be individuals who perhaps are not working
24 in that building?

25 A Possibly. yes.

1 Q Okay. Or maybe somebody who works there who forgot
2 their ID?

3 A Yes.

4 Q Okay. And then there is the separate entrance for
5 people who have government ID?

6 A Yes, ma'am.

7 Q And what are the procedures to get in there?

8 A If they have a valid federal ID they show their ID to
9 us, and then once we make sure that is a valid government,
10 federal ID, we let them pass.

11 Q Okay. So that morning on the 10th, between 8:30 and
12 9:00 approximately, do you recall encountering an individual
13 who you later discovered was James Everett at the entry point
14 there?

15 A Yes, I do recall.

16 Q Okay. You interact with a lot of individuals, is that
17 true? Do you interact with a lot of individuals?

18 A Yes, I do.

19 Q In that part of your job?

20 A Yes.

21 Q Okay. In that particular time in the morning, is that a
22 common time for there to be a higher population?

23 A It is one of our busier moments. We have people coming
24 around from other buildings utilizing the cafeteria for
25 breakfast. We also have individuals dropping off their

1 children at the daycare that we have at that facility.

2 Q Okay. So you interact with a lot of individuals, but
3 this who you later discovered as James Everett, that sticks
4 out in your mind as someone you interacted with?

5 A That's correct.

6 Q Okay. Why, why would this individual stick out? Why
7 does this individual stick out as someone you interacted with?

8 A The individual came into the building, and normally when
9 we get visitors to come into the building, you know, their
10 demeanor is very calm. They are just -- I don't really want
11 to say normal, but you know, they are -- I would say with that
12 individual he was angry. He seemed that he was angry. It
13 wasn't a normal -- for what the visitors that we have that
14 comes into the building.

15 Q So it wasn't your typical encounter?

16 A It wasn't a typical encounter, no.

17 Q Okay. Had you ever seen this individual before?

18 A I had not.

19 Q Did any of the other PSO's that were with you indicate
20 that they had ever seen this individual?

21 A No.

22 Q Okay. To see this individual that you encountered that
23 day sitting here in the courtroom?

24 A I do.

25 Q Okay. Can you take a look around and can you identify

1 him by an article of clothing that he is wearing?

2 A He is wearing a blue shirt. He is sitting down right
3 there at the desk.

4 Q Okay.

5 MS. PRATTEN: Let the record reflect that the
6 witness has identified the defendant as the individual that he
7 interacted with at the Bolling Federal Building on the morning
8 of March 10th, 2016?

9 THE COURT: The record will so reflect.

10 BY MS. PRATTEN:

11 Q So when you and the other PSO's initially encounter the
12 defendant that morning, did he indicate why he was there?

13 A When he entered the building he didn't first state what
14 he was doing there at the building. He mentioned that he was
15 looking for a federal judge, but he seemed confused on why he
16 was there in the first place.

17 Q Okay. And I think a little earlier you said he appeared
18 angry, what gave you this impression?

19 A When he walked into the building his fists were
20 clenched, he had a just an angry demeanor on his face, you
21 could tell by the way he was walking that -- just from my
22 point of view that he seemed like he was just enraged by
23 something.

24 Q Okay. Fist clenched, what else did you observe that
25 indicated that?

1 A When he walked into the building he first saw me. We
2 kind of locked eyes and he looked right at me and said,
3 "There's that mother fucker right there."

4 Q Okay. He said that to you?

5 A Yes.

6 Q What kind of -- how did he say that to you? Loud,
7 quiet, could you describe that?

8 A He didn't say it loudly. He was from me to you and
9 maybe like he said it to himself, but loud enough for everyone
10 to hear him.

11 Q Okay. And then what happened after he said that?

12 A He approached me and with his fists clenched and his
13 demeanor, it seemed like a visible threat. At that time --

14 Q A threat to you?

15 A Yes.

16 Q Okay.

17 A At the time that he was approaching me another PSO
18 protective security officer came up behind me on my right and
19 shouted at him to stop, and he stopped at that time. He then
20 proceeded to talk to the PSO Marcus Williams. And I radioed
21 for FPS assistance at that time.

22 Q Okay. So proceeding to talk. Could you hear what the
23 defendant was saying?

24 A I did hear him mention the federal judge which made us
25 think that he was looking for this building and not the

1 federal building at 601 because we don't have any -- there is
2 no courts down there I don't believe so.

3 Q So initially he said he appeared angry and when he is
4 talking did you still observe him to appear angry?

5 A Yes, yes, throughout the entire time he was -- his fists
6 were still clenched, he was just his body language was, just
7 gave off -- he was tense, very tense.

8 Q Okay. And was he actually permitted to access the
9 building?

10 A No, he not.

11 Q Okay. Why not?

12 A Well, just because of his behavior right off the bat.
13 We weren't going to allow that individual to enter the
14 building without further investigation.

15 Q Okay. What did he do when he was not permitted to enter
16 the building?

17 A When I radioed for FPS, Marcus Williams told him that
18 there wasn't any federal judges at that location. He turned
19 around and exited the lobby.

20 Q Okay. Were you able to see him when he left the lobby?

21 A I'm sorry?

22 Q Were you able to see him when he left the lobby?

23 A Yes, I was able to see him.

24 Q Okay. And if we are looking at that photograph again of
25 the Bolling Building and the piece of the building that sticks

1 out that you have indicated is the lobby, there is the bottom
2 half of the lobby which backs against the federal building,
3 that leads into the federal building, right?

4 A That's correct.

5 Q And then there are three other walls. Are those walls,
6 walls or can you see through them, are they glass?

7 A They are all made of glass.

8 Q Okay. So you can see clearly see through them?

9 A Yes.

10 Q Okay. And that was how you were able to view the
11 defendant when he left the building?

12 A That's correct.

13 Q Okay. What did you see him do when he left the
14 building?

15 A I saw him proceed to a vehicle that I believed was his.

16 Q Can you describe the vehicle?

17 A The vehicle was a four-door, gray sedan.

18 Q Okay. And where was this vehicle?

19 A The vehicle was parked on the street right around this
20 area in the emergency vehicle only parking lot or parking
21 right along side the curve.

22 Q Okay. And what did he do when he approached the
23 vehicle?

24 A He opened up the driver side door. At that point when
25 -- it looked like he was getting something out of his car, but

1 I couldn't tell because he lowered himself after he opened the
2 door. I lost sight of him so.

3 Q Okay. Now, you indicated that you called FPS, would
4 this be Federal protective Service?

5 A Yes, ma'am.

6 Q Okay. And why did you call them?

7 A Federal Protective Service, we have a protocol where if
8 there is any individual that is threatening that we would
9 observe to have any type of like maybe an angry body language,
10 they want us to call them to handle the situation.

11 Q Okay. So it is just a, a -- is it fair to say that it
12 is a different, different responsibilities?

13 A Yes.

14 Q So your responsibility is the entry point, is that fair
15 to say?

16 A Yes, ma'am.

17 Q And their responsibilities are to respond when you have
18 problems?

19 A That's correct.

20 Q Okay. Were you their when they arrived?

21 A I was.

22 Q Do you know approximately how many people arrived? How
23 many FPS officers?

24 A I believe there four of them that arrived?

25 Q And what information were you able to convey to them

1 about the situation?

2 A I told them that the individual came in. He was, he was
3 acting sporadic, he -- his body language indicated that he was
4 angry about something, but we had a hard time understanding
5 him, and before they were able to come down he had exited the
6 lobby and he was at a vehicle, and the vehicle was on the
7 sidewalk in the emergency vehicle only parking spots.

8 Q And you were actually able to point him out them?

9 A I was able to point where the vehicle was, but I don't
10 recall if he was standing up or in the vehicle at the time.

11 Q Okay. Did you actually see FPS encounter him?

12 A I did.

13 Q Okay. Can you go ahead and describe the interactions
14 that you saw?

15 A From what I saw the FPS officers, Federal Protective
16 Services Officers exited the lobby, and they started to walk
17 in the direction of Mr. Everett. I witnessed Mr. Everett
18 leave his car or leave the car, and he started walking towards
19 the FPS officers. It wasn't a normal walk, it was -- he was
20 moving quickly. It wasn't a sprint or a run, but he was
21 moving quickly towards the FPS officers.

22 Q Okay. And did you see anything after that?

23 A I saw them when Mr. Everett got closer to the FPS
24 officers, I could hear yelling, but I couldn't really make out
25 what was being said, it was muffled.

1 Q Is that because he were inside still?

2 A Yes, ma'am. But I did here, I heard some muffled
3 yelling, I couldn't make out was being said. I observed one
4 of the federal protective officers deploy his taser and
5 pointed it at Mr. Everett.

6 Q Okay. So you didn't actually -- did you actually see
7 him deploy it on the defendant or did you just see him pull it
8 out?

9 A Just pulled it out.

10 Q Okay. What did you see after that?

11 A I saw another one of the federal protective officers
12 move behind Mr. Everett. And it looked like he grabbed both
13 of the individuals hands, and then they took him down to the
14 ground.

15 Q Okay. And what about after that?

16 A After that you could tell that there was a struggle. It
17 looks like they were struggling to keep him down on the
18 ground. I also witnessed other KCPD, Kansas City Police
19 Officer crossing the street and helping the federal protective
20 officers subdue the individual.

21 Q Okay. And while this is all going on you are still
22 doing your regular duties as well of the entry point?

23 A That's correct.

24 Q Okay. Eventually did you see the defendant leave the
25 scene?

1 A The defendant leave the scene? I saw him being put in
2 the back of an ambulance.

3 Q Okay. And eventually -- the vehicle that you observed
4 earlier, did you also see that leave the scene?

5 A Yes, that vehicle was towed away.

6 Q Okay. Are you aware that there are surveillance cameras
7 that are located on top of the Richard Bolling Federal
8 Building in various locations?

9 A I am.

10 Q Okay. And to your knowledge are they fully functional
11 and capable of recording events that happen at various
12 portions around the vicinity of the building?

13 A Yes, ma'am.

14 Q Are you aware whether they were fully functional and
15 capable that morning?

16 A Yes, I am aware of that.

17 Q And are you further aware that they were actually able
18 to capture footage of everything that you testified here
19 today?

20 A Yes.

21 Q Um, have you had a chance to review this footage prior
22 to trial?

23 A I have.

24 Q Okay. Is the footage that you reviewed a complete and
25 accurate representation of the events as you recall them

1 happening that day?

2 A Yes, ma'am.

3 Q All right. I'm going to hand you now what has been
4 previously marked as Government's Exhibit 10 and ask you to
5 take a look at this, and do you recognize that?

6 A Yes, ma'am.

7 Q And what do you recognize that to be?

8 A It is the surveillance footage of the events that day.

9 MS. PRATTEN: Okay. Your Honor, I move now to admit
10 what has been previously marked as Government's Exhibit 10
11 into evidence.

12 MR. ERMINE: No objection.

13 THE COURT: Government's Exhibit 10 shall be
14 admitted.

15 (THEREUPON; Government's Exhibit No. 10 was then
16 admitted into evidence by the Court.)

17 MS. PRATTEN: And permission to play and publish
18 this to the Jury now?

19 THE COURT: You may.

20 BY MS. PRATTEN:

21 Q Okay. And before we start this footage, we're almost
22 there, I just want to note, you have viewed this before,
23 right?

24 A I have, yes.

25 Q So these clips that we are viewing, it is not a smooth,

1 nice video that we are all going to watch, correct?

2 A That's correct.

3 Q Okay. It's a bunch of clips that are essentially put
4 together?

5 A Yes, ma'am.

6 Q Okay. And the timestamps that we are going to see -- is
7 there a timestamp on this?

8 A I think it might be on the upper left corner, but I'm
9 not sure.

10 Q Okay. And the timestamps, do you have any knowledge as
11 to whether these timestamps are generally accurate?

12 A That timestamps are -- there's an issue with the
13 timestamps where there is about 20 to 25 minute discrepancy.

14 Q Okay. What is actually going to show here is not
15 necessarily correct?

16 A With the time, no. It could be off.

17 Q Okay. And one more question, do you know remember what
18 the defendant was wearing that morning?

19 A Bluejeans, and I don't know, I think he might have had a
20 coat on, I'm not sure.

21 Q When you reviewed this video and we're about to play it
22 right now, can you go ahead and point out when you see the
23 defendant enter the scene?

24 (THEREUPON, Government's Exhibit 10 was published to
25 the Jury in open court.)

1 BY THE WITNESS:

2 A Yes.

3 Q And this video is this kind of panning the front of the
4 building?

5 A Yes, ma'am.

6 Q Going back and forth?

7 A Yes.

8 Q Is that 12th Street right there?

9 A That is 12th street.

10 Q Are those the vehicles that you were talking about?

11 A Yes, ma'am.

12 I wasn't sure of that individual --

13 Q Okay. That individual that we just saw in the corner of
14 the scene right there?

15 A Correct. That's the individual right there.

16 Q Okay. Now, we saw him coming towards the building a
17 couple minutes ago, and right now we are clearly see him going
18 away. I'm going to ask you, these are two actually separate
19 clips, correct?

20 A Yes.

21 Q So his encounter wasn't the five seconds we just seen
22 reflected in the video?

23 A No.

24 Q And what is he doing right now?

25 A He is back at the vehicle I described and he was -- we

1 could hear yelling outside, but it wasn't really clear since
2 we were inside the lobby.

3 Q Okay. And that is him on 12th Street right now?

4 A That's correct.

5 Q Okay. Now, he is going back towards the federal
6 building?

7 A Yes, ma'am.

8 Q Okay. So this would have been prior to when you saw him
9 interact with FPS officers?

10 A Yes, that was prior.

11 MS. PRATTEN: Your Honor, I don't have any further
12 questions right now.

13 THE COURT: Thank you. Mr. Ermine, cross?

14 CROSS-EXAMINATION

15 BY MR. ERMINE:

16 Q When Mr. Everett came into the lobby of the federal
17 building you testified he seemed confused?

18 A Yes, I did.

19 Q And you mentioned that he seemed angry?

20 A Yes.

21 Q And you mentioned that he had a bit of a -- kind of a
22 threatening demeanor about him?

23 A Yes.

24 Q Was he yelling in the lobby?

25 A He wasn't screaming in the lobby, but he had his voice

1 raised.

2 Q And he was cursing too, wasn't her?

3 A Yes.

4 Q Would you say that he was just generally acting
5 belligerent?

6 A Yes, I would.

7 Q And while he was in the lobby, he actually slapped
8 himself in the face, didn't her?

9 A Yes.

10 Q Based on you seeing all this happen, it was your opinion
11 that he was under the influence of drugs, wasn't it?

12 A Under -- in my opinion, no normal person would act like
13 that so I would assume that he was under the influence of
14 something.

15 Q Okay. And that is because he appeared to be yelling for
16 no reason, right?

17 A Yes.

18 Q And he wasn't complying with the commands that you all
19 were giving him, right?

20 A That's correct.

21 Q And when you saw him at the vehicle even you saw him
22 throwing things out of the vehicle into the street, right?

23 A Yes.

24 Q And you actually saw him shouting curse words at
25 passersby in the street, didn't you?

1 A I'm not sure if they were curse words, but he was
2 yelling.

3 Q Yelling at passersby?

4 A Yes.

5 Q And he was just generally uncooperative with any
6 commands that you were giving him that day, wasn't he?

7 A That is correct.

8 Q You never actually saw him with a firearm that did, did
9 you?

10 A No.

11 MR. ERMINE: No further questions.

12 THE COURT: Ms. Pratten, any redirect?

13 MS. PRATTEN: Yes, your Honor.

14 Your Honor, may I have one moment, please.

15 THE COURT: Yes.

16 REDIRECT EXAMINATION

17 BY MS. PRATTEN:

18 Q All right. If we could, Ms. Beyer, reboot that clip one
19 more time, please. Thank you.

20 And again, I'm going to walk you through again real
21 quick what this clip entails, because it's a little quick and
22 minus audio, of course.

23 Okay. So is this the point at which the
24 defendant -- a few minutes. Okay. Is that the point in which
25 he arrived at the building?

1 A Yes.

2 Q Okay. And how long in realtime -- I see -- that is the
3 defendant exiting right now, right?

4 A That's correct.

5 Q Approximately how long in realtime would you say that
6 encounter in the lobby was?

7 A I would say it is was less than five minutes.

8 Q Okay. And then at this point that is where you saw him
9 enter that vehicle?

10 A That's correct.

11 Q And in realtime, how long do you think he was there?

12 A At the vehicle he might have been there for about a
13 minute or two.

14 Q Okay. And this is the scene that you have described on
15 the street?

16 A Yes.

17 Q What can approximate what the timeframe for this is
18 about?

19 A Maybe 30 seconds or so.

20 Q Okay. And then again at this point just to clarify, is
21 the point which he reapproaches the federal building, correct?

22 A That's correct.

23 Q Okay.

24 MS. PRATTEN: I have nothing further, Your Honor.

25 Thank you.

1 THE COURT: Any recross?

2 RECROSS-EXAMINATION

3 BY MR. ERMINE:

4 Q I would like to clarify something with you. You just
5 testified that he was at that vehicle in this video for a
6 minute and a half?

7 A At the vehicle for about a minute or so.

8 Q During this clip that we are seeing here? Is that what
9 your testimony is?

10 A Yes.

11 Q Now, isn't this just showing -- this is just speeding
12 forward one second at a time, this video, correct?

13 A I'm not sure what the gap is.

14 Q And you have watched this video before, right?

15 A I have.

16 Q And you have paid attention to it enough to notice that
17 the timestamp is off, correct?

18 A That's correct.

19 Q But the timestamp is just off in terms of -- it's not
20 connected with realtime. For instance, if the video said 8:30
21 in the morning, it doesn't necessarily mean the video was
22 taken at 8:30 in the morning, correct?

23 A That's correct.

24 Q But the timestamp at the top left is correct insofar as
25 it is measuring the passage of time, right?

1 A Yes.

2 Q So if the video shows that he at the car and is jumping
3 one second at a time, and he is only there for about ten still
4 images, that would be a passage of about 10 seconds, would it
5 not?

6 A I believe so.

7 MR. ERMINE: Okay. Nothing further.

8 THE COURT: Thank you, officer. You can step down.

9 Government call their next witness.

10 MR. ERMINE: Yes, Your Honor. The government will
11 call Officer Charles Schwarz.

12 THE COURT: Officer, if you can come forward and
13 raise your right hand to be sworn. Thank you.

14 CHARLES SCHWARZ

15 Called as a witness on behalf of the PLAINTIFF, was
16 duly sworn, and testified as follows:

17 THE COURT: You can have a seat right here. Watch
18 your step as you go up. Counsel.

19 DIRECT EXAMINATION

20 BY MS. PRATTEN:

21 Q Good morning.

22 A Good morning.

23 Q I'm sorry. Good afternoon.

24 A Good afternoon.

25 Q Um, can you go ahead and state your name for the Court?

1 A Charles Schwarz.

2 Q And who is your employer?

3 A Department of Homeland Security, Federal Protective
4 Service.

5 Q Okay. Federal Protective Service, that's a component of
6 Homeland Security?

7 A Sub-component, yes, ma'am.

8 Q Okay. Sub-component. And how long have you worked for
9 FPS?

10 A Three and half years.

11 Q And what is your job title?

12 A My job title is inspector.

13 Q Okay. As an inspector for FPS, what kind of training
14 did you have to go through to become an inspector of FPS?

15 A The initial training is six months in total down in
16 Glynco, Georgia, at the federal law enforcement training
17 center. The first three months is the uniform and police
18 training program, which includes federal law, use of force,
19 um, weapons training, physical techniques and written and
20 practical exercises.

21 Q Okay. So you said initial. So do you also have
22 additional training?

23 A Yes, ma'am.

24 Q Okay. What kind of additional training do you have?

25 A Add-on is three weeks of it's called advanced -- excuse

1 me. Advanced individualized training program. That is
2 roughly three weeks where we cover policies. And then rest is
3 an additional month and week of physical security training
4 program. Once we leave Glynco, we come back and we go through
5 a 12 week -- excuse me. 12 week -- sorry, I can't think of
6 the word.

7 Q More training?

8 A Yes, it is kind of like a ride along. I just can't
9 think of the name right now.

10 Q So it's like a practical like training?

11 A Yes, ma'am.

12 Q Okay. Thank you. And what are your actual duties of
13 your job?

14 A It's a two part. First part is law enforcement. We
15 cover any government leased or owned facility by general
16 services administration. And then the second part is physical
17 security. We conduct assessments on those facilities, looking
18 at fences, barriers, cameras, IDS systems, and things like
19 that.

20 Q So when you say you cover government buildings or
21 government leased buildings, what do you mean by cover.

22 A We conduct patrols, we respond to calls, we -- if there
23 is a counter measure, i.e., cameras, we come and take a look,
24 and we get technicians to come out and repair those counter
25 measures. We're able to write tickets, and we just patrol.

1 Q Okay. So any kind of emergency at any federal building
2 around Kansas City, that your job?

3 A Yes, ma'am.

4 Q Okay. Now, your physical office, where's that located?

5 A It's located 601 East 12th Street, Kansas City,
6 Missouri.

7 Q Is that at the Richard Bolling Federal Building?

8 A Yes, ma'am.

9 Q About two or three blocks from here?

10 A Yes, ma'am.

11 Q Give or take?

12 A Yes, ma'am.

13 Q Okay. But your duties, if I understand you right, when
14 you respond to these calls, you go to any of the federal
15 buildings?

16 A Yes, ma'am. I have a building as far as Independence,
17 Kansas.

18 Q Okay. Let's talk a little bit about the Bolling in
19 particular. About how many floors would you say are in this
20 building?

21 A 18 floors.

22 Q 18 floors? Okay. We kind of population is housed in
23 this facility?

24 A Roughly 3500.

25 Q Okay. Roughly 3500. Of those 3500 people, who are

1 these people?

2 A You have Social Security Administration, National
3 Oceanic Atmospheric Agency, there is Army Corps of Engineers,
4 you have a daycare on the first floor, two credit unions, a
5 cafeteria, a snack shop, federal protective service and other
6 government regulation.

7 Q And when you are naming these different federal
8 agencies, do some of them, like the Social Security
9 Administration, do they occupy more than one floor?

10 A Yes, ma'am.

11 Q And you said there was a day care on the first floor?

12 A Yes, ma'am.

13 Q And you said there is a credit union on the first floor?

14 A There is a credit union on the first floor and on the
15 ground floor?

16 Q Okay. So some of these floors, are they open to the
17 public?

18 A Yes, ground and first floor.

19 Q All right. And which floor are you located on?

20 A We are located on the second floor.

21 Q Okay. And a rough guess, and I know already said this,
22 but how many people do you think on an average workday, um,
23 around 8:30 or 9:00 in the morning, about how many people do
24 you think occupy that building?

25 A Roughly about 3500.

1 Q Okay. And I'm gonna show you what has been previously
2 admitted as Government's Exhibit 4 which is an ariel view of
3 the federal building. Well, I want to show you Government's
4 Exhibit 4. Just give me one second.

5 While we are getting that figured out, can you go
6 ahead and tell me how many entrances are actually entrances
7 that the public can enter through in the federal building?

8 A Two entrances.

9 Q Two entrances?

10 A One off of 12th Street and one off of 13th Street.

11 Q Okay. One off of 12th Street and one off of 13th
12 Street?

13 A Yes, ma'am.

14 Q And these entrances are they both monitored by PSO's?

15 A Yes, ma'am.

16 Q And we heard earlier these are contracted individuals
17 that provide entry check?

18 A Yes, ma'am.

19 Q Okay. So let's focus on -- do you recall the morning of
20 March 10th, 2016?

21 A Yes, ma'am.

22 Q Okay. We're going to focus in on that right now. And
23 I've got up there now, if you want to take a look at it, that
24 is the Exhibit No. 4 that I was talking about. Um, there is a
25 little pointer right in front of you. And if you want to lean

1 forward a little bit. Can you show the Jury where the 12th
2 Street entrance that you are just talking about is located?

3 A Right there.

4 Q Okay. And where is the other entrance that the public
5 can access the building from?

6 A Right here.

7 Q Okay. And what street would that be down there?

8 A That would be 13th Street.

9 Q Okay. Thank you. So back to the morning of
10 March 10th, 2016, do you recall what hours you worked that
11 day?

12 A At the time I was working 8:00 AM to 4:00 PM.

13 Q All right. Around the 8:30, 9:00 o'clock window, did
14 you respond to a call service at the Richard Bolling Federal
15 Building?

16 A Yes, ma'am.

17 Q Okay. Go ahead and tell the Jury how that call came in?

18 A At around 8:30 in the morning the PSO's in the 12th
19 Street lobby got on the radio and radioed to Battle Creek Mega
20 Center, which is located in Battle Creek, Michigan. That is
21 our dispatch center. They radioed in that they had a
22 disruptive individual in the lobby. At that time, myself,
23 Inspector Yaden, Inspector Wright, and Inspector Patterson all
24 radio that they would be responding to help them. So we
25 responded to the lobby.

1 Q Okay. And you said at least two or three other people
2 were with you?

3 A Yes, ma'am, three.

4 Q And you said you responded to the 12th Street lobby?

5 A Yes, ma'am.

6 Q Okay. Did you eventually when you responded come into
7 contact with an individual you later found out to James
8 Everett?

9 A Yes, ma'am.

10 Q Okay. Is that individual in this courtroom?

11 A Yes, ma'am.

12 Q Can you go ahead and identify him with an article of
13 clothing that he is wearing?

14 A Yes, ma'am. He is sitting down with the blue top.

15 MS. PRATTEN: Okay. Let the record reflect the
16 witness has identified the defendant as the individual he came
17 into contact with that morning?

18 THE COURT: The record will so reflect.

19 BY MS. PRATTEN:

20 Q Okay. Had you seen the defendant prior to that morning?

21 A No, ma'am.

22 Q Okay. Is the first place in which you encountered him
23 the lobby?

24 A No, ma'am. He was actually -- when we arrived in the
25 lobby, he was not in the lobby. The PSO's in the lobby

1 pointed out towards the street and said the individual at the
2 time was out by his vehicle.

3 Q Okay. And can you describe his demeanor when you first
4 encountered him?

5 A When we first encountered him I will explain it as a
6 little faster than a walk, slower than a run. Almost kind of
7 like a skip with his hands down by his side with his fists
8 clenched coming toward us. He was yelling something and we
9 couldn't really make it out at the time. He got to us and he
10 started to curse. He was very, very upset at an unknown
11 reason.

12 Q Okay. So when you responded to the lobby, you and the
13 other officers get the information you need from the other
14 officers, you exit the lobby, and then the defendant
15 approached you?

16 A Yes, ma'am.

17 Q In the manner you described?

18 A Yes, ma'am.

19 Q Okay. Did you hear him say anything?

20 A He said that -- as we walked outside he said, I'll beat
21 your ass. Something to the effect of that. Something else in
22 the effect of, I'll knock your fucking head off. We tried to
23 talk to him and it just didn't work.

24 Q Um, and he is saying this as he is coming towards you?

25 A Yes, ma'am. He was standing around three feet away from

1 us at this time coming up to us.

2 Q Okay. How he approached you, can you describe the speed
3 with which he approached you?

4 A Not a run, in between a run and a walk. Almost as a
5 skipping.

6 Q Okay. What did the -- what did you and the officers do
7 in response to this?

8 A At this time Inspector Wright tried to calm him down.
9 It didn't happen. Inspector Wright then pulled his taser and
10 pointed it at Mr. Everett. As Inspector Wright had the taser
11 pointed at Mr. Everett, Mr. Everett, said, oh, you're going to
12 shoot me now. I'll fucking kill you. Inspector Yaden moved
13 to the back side of Mr. Everett because Mr. Everett was
14 pointing all of his attention of Inspector Wright. Inspector
15 Yaden grabbed both of Mr. Everett's arms and tried to hold
16 them behind him to place cuffs on him. At that time, Mr.
17 Everett tightened his muscles at the shoulders and tried to
18 separate his arms. At that time I grabbed Mr. Everett by the
19 front collarbone area of the sweatshirt, Inspector Wright
20 holstered his taser and grabbed Mr. Everett's arm and tried to
21 trip Mr. Everett to get him to the ground. Mr. Everett
22 stepped over, he did not fall the first time, it took a second
23 attempt, and for me to pull forward to get Mr. Everett to the
24 ground. Once Mr. Everett was to the ground, Inspector Wright
25 was able to gain control of Mr. Everett's arm. Except for he

1 was grabbing at his front waistband and holding onto it. So I
2 tried to help Inspector Wright pry his hand off of his front
3 waistband. Finally, we were able to get his hand from his
4 front waistband and able to get him handcuffed. At this time
5 I stood up and looked up and the Kansas City Police Department
6 was already on scene helping us keep his legs under control.
7 Once we got up, I stood up, I noticed that there was blood on
8 my hand so I tried to stay back away from Mr. Everett.

9 Q And that was your blood?

10 A Yes, ma'am.

11 Q Okay. I think you mentioned he was grabbing his
12 waistband?

13 A Yes, ma'am.

14 Q Okay. And you specifically took other actions, you and
15 the other officers, in response to this particular action?

16 A Yes, ma'am.

17 Q And why is that?

18 A We are taught in our initial training young violators or
19 weapon violators will hide weapons in the front waistband.
20 That is a common place where that is held. So we try to keep
21 hands away from those areas.

22 Q And then you mentioned KCPD officers responded to the
23 scene?

24 A Yes, ma'am.want?

25 Q Do you know how many? More than one?

1 A More than one. I believe there were two.

2 Q Okay. And you said you did -- sorry. Did you receive
3 injuries? Was that what that blood was?

4 A Yes, ma'am. I had a cut on my finger.

5 Q Okay. You sought medical attention for those?

6 A Yes, ma'am.

7 Q Okay. During this entire encounter with him, I believe
8 you said you came on duty at 8:00, right?

9 A Yes, ma'am.

10 Q And so when it happened you were in your official
11 capacity performing your official duties?

12 A Yes, ma'am?

13 Q And you didn't get off duty, did you, during the entire
14 encounter?

15 A No, ma'am.

16 Q Okay.

17 MS. PRATTEN: Your Honor, can I have a moment,
18 please?

19 THE COURT: Yes.

20 MS. PRATTEN: I don't have any further questions at
21 this time.

22 THE COURT: Mr. Ermie, cross?

23 CROSS-EXAMINATION

24 BY MR. ERMINE:

25 Q Inspector or officer?

1 A Inspector, sir.

2 Q Inspector Schwarz, when you first encountered Mr.
3 Everett, you testified he seemed upset, correct?

4 A Yes, sir.

5 Q And he was yelling?

6 A Yes, sir.

7 Q And as far you could tell there was no reason for him to
8 be acting that way, correct?

9 A Yes, sir.

10 Q So as you testified ultimately Mr. Everett is taken to
11 the ground, at that point an ambulance is called an EMT shows
12 up, correct?

13 A Yes, sir.

14 Q And Mr. Everett actually ended up going to Truman
15 Medical Center, correct?

16 A Yes, sir.

17 Q And in case we have some jurors that are not familiar
18 with Kansas City, that is a fairly big hospital just a few
19 blocks south, south of here, correct?

20 A Yes, sir.

21 Q And you know that Mr. Everett went to Truman Medical
22 Center because you actually went to Truman Medical Center, not
23 with him, but you followed along afterward, correct?

24 A Yes, sir.

25 Q And you had another inspector go with you to Truman

1 Medical Center, correct?

2 A Yes, sir.

3 Q To be with Mr. Everett there?

4 A Yes, sir.

5 Q And when you got to Truman Medical Center you went to
6 Mr. Everett's room, correct?

7 A I was just outside of Mr. Everett's room.

8 Q Okay. And so you actually saw Mr. Everett strapped to
9 the bed there at Truman?

10 A Yes, sir.

11 Q And they -- your understanding was they had done that
12 because he was acting aggressively with the staff, right?

13 A Yes, sir.

14 Q And he was even threatening the staff there, wasn't he?

15 A Yes, sir.

16 Q And he had threatened the hospital security there,
17 didn't he?

18 A Yes, sir.

19 Q He even threatened the doctor?

20 A Yes, sir.

21 Q Now, while you are there, you saw Mr. Everett be
22 sedated, didn't you?

23 A I didn't see him get sedated. I knew they went in to
24 sedate him. But I did not physically see him get sedated.

25 Q And so then you know -- do you know why they sedated

1 him?

2 MS. PRATTEN: Objection, speculation, Your Honor.

3 THE COURT: Overruled.

4 BY MR. ERMINE:

5 Q I'm just asking do you have personal knowledge as to why
6 they were sedating him?

7 A I don't.

8 Q Okay. Did you hear any doctors comment about why they
9 were sedating him?

10 MS. PRATTEN: Objection, Your Honor. Hearsay.

11 MR. ERMINE: Present sense.

12 THE COURT: What is your question again?

13 MR. ERMINE: I'm asking him if he heard any doctors
14 comment about why they were sedating him.

15 BY THE WITNESS:

16 A I believe it was to calm him down.

17 Q Okay. Did they, for example, say why they were calming
18 him down?

19 MR. ERMINE: Objection, Your Honor.

20 THE COURT: I'm going to sustain that as to hearsay,
21 I'm presuming?

22 MS. PRATTEN: Yes, Your Honor.

23 MR. ERMINE: It is present sense, Your Honor. He is
24 hearing these statements be made, it is a contemporaneous
25 statement.

1 THE COURT: I'll overrule the objection. I'll allow
2 him to answer.

3 BY THE WITNESS:

4 A My understanding was they thought he was in some type of
5 drugs?

6 Q That's correct.

7 MR. ERMINE: Nothing further, Your Honor.

8 THE COURT: Ms. Pratten?

9 MS. PRATTEN: No, Your Honor. Thank you.

10 THE COURT: Okay. Thank you, Inspector. You can
11 stand down.

12 United States call their next witness.

13 MR. MCCARTHER: Yes, Your Honor. The United States
14 calls FPS Inspector -- well, former FPS Instructor, David
15 Wright.

16 THE COURT: Sir, if you want to come and you can
17 come round this way here, and I'll have my courtroom deputy
18 swear you in.

19 DAVID WRIGHT

20 Called as a witness on behalf of the PLAINTIFF, was
21 duly sworn, and testified as follows:

THE COURT: Thank you, sir. You can have a seat here. Watch your step as you go up. Counsel.

24 DIRECT EXAMINATION

25 BY MR. MCCARTHER:

1 Q Sir, could you please state your name for the Jury?

2 A David Wright.

3 Q Could you spell your last name, please?

4 A W-R-I-G-H-T.

5 Q And is your current occupation, sir?

6 A I am a security specialist at USDA Department of
7 Agriculture.

8 Q How long have you been in that position?

9 A Approximately eight or nine months.

10 Q What were you doing before you worked in that field?

11 A I was an FPS inspector?

12 Q And how long had you been in that role as an FPS
13 inspector?

14 A A little over three years, sir.

15 Q Were you an FPS inspector as of March 10, 2016?

16 A Yes, I was, sir.

17 Q As part of the FPS, what were your duties and
18 responsibilities in that role?

19 A Protection of federal property, federal buildings,
20 federal employees, law enforcement investigations, patrol,
21 stuff like that, sir.

22 Q What type of crimes did you investigate in that role?

23 A Thefts, assaults, vehicle damage, property damage.

24 Q And this would all have to do with federal facilities,
25 is that fair to say?

1 A Yes, sir.

2 Q During your time with FPS, would investigating specific
3 individuals around the federal building be part of your
4 official duties with FPS?

5 A Yes, it would, sir.

6 Q Would investigating hostile individuals at the federal
7 building be part of your official duties at the FPS?

8 A Yes.

9 Q And would investigating hostile individuals demanding to
10 see federal judges be part of your official duties?

11 A Yes, sir.

12 Q Where is the headquarters for the FPS, where you worked?

13 A It is at 601 East 12th Street. Approximately three
14 blocks down from here.

15 Q And is that in the Western District of Missouri?

16 A Yes, that is, sir.

17 Q Now, we have heard some testimony about that building,
18 there are about a dozen federal agencies in that building, is
19 that correct?

20 A I believe it is over a dozen.

21 Q There's a post office in there?

22 A Yes. There is a couple civilian businesses, a couple of
23 banks, a day care, but mostly federal agencies and federal
24 tenants.

25 Q Is your role in conjunction with those agencies and the

1 people who frequent that building, is your role to safeguard
2 those people that go in and out of the building?

3 A Yes, sir, on a daily basis.

4 Q And to safeguard the people who actually work in that
5 building, is that correct?

6 A Yes, sir, employees and visitors.

7 Q I want to go to March 10th, of 2016, do you remember
8 that date, sir?

9 A Yes, I do.

10 Q Were you working on that date?

11 A Yes, I was.

12 Q At approximately 8:30 a.m. did anything unusual happen?

13 A I was sitting at my desk just normal every day at times,
14 and then get a call over the radio, the Protective Security
15 Officer requesting FPS response at the 12th Street lobby.

16 Q And what did you do in response?

17 A Myself, Inspector Dave Yaden, Inspector Charles Schwarz,
18 and Wesley Patterson, we all went downstairs, we are located
19 on the second floor, we all go downstairs and proceed to the
20 lobby.

21 Q Now, when you get to the lobby what did you observe?

22 A The Protection Security Officers pointing outside
23 towards the KCPD headquarters saying, that's the guy, that's
24 the guy.

25 Q And what did you know about that guy at that point?

1 A Nothing at that time.

2 Q And so what did you proceed at that point?

3 A We go -- I can't remember who was first who was second,
4 I was third, and Inspector Wes Patterson was fourth. We go
5 out the door and we start walking towards the street.

6 Q And as you began walking towards the street did you see
7 anything unusual?

8 A Yes, sir.

9 Q What did you see?

10 A I saw an individual acting very erratic.

11 Q That individual, did you wind up having a confrontation
12 with him?

13 A Yes, I did, sir.

14 Q That individual, is he sitting in this courtroom today?

15 A Yes, he is, sir.

16 Q Could you describe what he is wearing and where he is
17 seated?

18 A Long sleeve button up, I believe it is stripes.

19 Q And is he sitting at defense counsel table?

20 A Yes, he is.

21 MR. MCCARTHER: Your Honor, may the record reflect
22 that the witness has identified the defendant, James Everett?

23 THE COURT: The record will so reflect.

24 BY MR. MCCARTHER:

25 Q Okay. So as you see this individual in the street, what

1 is you and your fellow officers response?

2 A Inspector Dave Yaden goes to my right, Inspector Charles
3 Schwarz goes to my left, and I continue to walk straight.

4 Q Were you saying anything to the defendant?

5 A I hadn't made contact at that time.

6 Q Had anyone made contact at that time?

7 A Inspector Dave Yaden, he was he trying to establish
8 contact?

9 Q And what was he saying to try and establish contact?

10 A Sir, hey sir, sir, calm down. Things like that.

11 Q And in response to Inspector Dave Yaden attempting to
12 contact Mr. Everett, what did Mr. Everett do in response?

13 A He walked very fast towards us, throwing up his hands
14 and arms, just hollering, not -- couldn't really understand
15 him.

16 Q Was there a point where you could understand what he was
17 saying?

18 A He was pretty close.

19 Q For instance, did he made any specific statements to you
20 and your officers?

21 A Most of it was unclear but I did hear I'm going to knock
22 your fucking head off, I'm going to fuck you up.

23 Q And in fact, did he also tell you that he was going to
24 kill you?

25 A Don't know why, he came straight towards me and I was

1 trying to keep a -- there's a concrete post right beside that
2 hold up the five polls in front of the building. I was trying
3 to keep that concrete post between me and Mr. Everettts. And
4 he kind of jumped, lounged closing the distance, and that is
5 when I pulled out my taser.

6 Q And why did you pull out your taser?

7 A Because I thought -- I didn't know what he was doing,
8 but he was closing the distance, and I thought that he was
9 going to do something to me, assault me.

10 Q So after you pulled out your taser did the defendant say
11 anything to you specifically?

12 A He dropped his hands, everything just calmed down for a
13 second, and he said, I'm going to fucking kill you.

14 Q Did you think he was trying to intimidate you?

15 A Yes.

16 Q Why do you think that?

17 A Just his entire demeanor that morning.

18 Q Let me ask you this, did you think he was serious when
19 he told you that?

20 A Yes.

21 Q Why did you think he was serious?

22 A He was just displaying symptoms of emotional, uh,
23 emotional distressed persons.

24 Q Did he look like maybe he was on drugs too?

25 A I -- he was completely --

1 Q I don't want you to speculate, but he wasn't acting
2 normally, right?

3 A No, it was not normal behavior.

4 Q And just to be clear when you -- when he said these
5 things to you and your fellow officers, were you on duty?

6 A Yes, I was.

7 Q Were you engaged in the performance of your official
8 duties?

9 A Yes, I was.

10 Q Would protecting yourself through the use of a taser be
11 a part of your official duties of an FPS officer?

12 A Yes, it is, sir.

13 Q So let's talk about the takedown. Now, there came a
14 point where you had to take the defendant to the ground, is
15 that fair to say?

16 A Yes, sir.

17 Q Where you believed your safety was at risk, is that
18 right?

19 A Yes, sir.

20 Q And when did that point come?

21 A After Mr. Everett dropped his hands and said he was
22 going to, you know, made that comment. Inspector Dave Yaden
23 tackled him from behind, held him by his, pretty much upper
24 torso. That is when I holstered my taser, never fired it,
25 Inspector Dave Yaden said handcuff him. I grab my handcuffs.

1 I go to put the first cuff on his left wrist and that is when
2 the individual started violently resisting.

3 Q Why was the decision made to place Mr. Everett in
4 handcuffs?

5 A He threatened law enforcement officers.

6 Q Did you attempt to take Mr. Everett down?

7 A Yes, I did.

8 Q Was it easy?

9 A No, it was not.

10 Q Why wasn't it easy?

11 A It took two leg sweeps from me on his side. Inspector
12 Dave Yaden trying to push him. And Inspector Charles Schwarz
13 trying to drag him down.

14 Q Did he eventually go down?

15 A Yes.

16 Q Now, while he is down do you have full control of his
17 arms?

18 A I had control of his left arm.

19 Q Did at any point Mr. Everett reach towards any part of
20 his body that made you think your safety might be at risk?

21 A I had his left arm splayed out perpendicular to his
22 body. I -- one of the few times I looked up and saw Inspector
23 Dave Yaden, I heard him say waistband, waistband. That is a
24 big indicator of possible weapon. And then I saw -- I was so
25 focused on just holding Mr. Everett's left arm down to keep

1 him pinned to the ground. And all I heard, you know, I heard
2 waistband, and then I saw Detective Dave Yaden struggling
3 trying to get his arm away from the front of his body.

4 Q Now, you testified you heard Inspector Yaden yell,
5 waistband, waistband, are you trained to try and -- are you
6 trained that a person that you are interacting with going to
7 the waistband is a danger to you?

8 A Yes.

9 Q Explain that training?

10 A Individuals -- most of the time they will either --
11 according to our training, they will either conceal weapons in
12 their pockets or their waistbands. So we have to control
13 their hands to limit the exposure to those areas.

14 Q Now, was the defendant finally restrained?

15 A Yes.

16 Q And I believe some additional officers came to help you
17 out, is that correct?

18 A It was two KCPD officers.

19 Q And that would be KCPD Detectives, Bradley Bailey and
20 Anthony Watt, is that correct?

21 A Yes.

22 Q After -- and I'm sorry. When I say restrained, he was
23 placed in the handcuffs, correct?

24 A Yes.

25 Q After he was placed in handcuffs, was he still

1 struggling?

2 A Yes, he was.

3 Q How was he struggling?

4 A So I transferred his arm, his left-hand and wrist to his
5 back, we were able to handcuff him. I stand up and noticed I
6 had some blood on my hand. I'm standing, you know, I'm
7 standing overhead and then I hear a thumb sound. And I look
8 and it is the suspect headbutting the concrete/brick patio.

9 Q So at that point you think, okay, this guy is not acting
10 normal, right?

11 A That is correct.

12 Q And probably before that you thought that? You thought
13 he might actually be on a drug, right?

14 A I --

15 Q Right. And I certainly don't want you to speculate.
16 Did he also try to attack you and your fellow officers while
17 he was restrained on the ground?

18 A Yes, after he headbutted the ground the first time, I
19 tried to put my hand on his forehead so he wouldn't do that
20 and he snapped at me or bit at my hand.

21 Q Was he able to bite your hand?

22 A No.

23 Q Did he try and spit at you or any of your fellow
24 officers?

25 A Yes. He tried spitting on my hand and -- we later ended

1 up putting a spit hood on him.

2 Q And a spit hood, just briefly explain that to the Jury.

3 What is that?

4 A A spit hood is a see through hood, if an individual is
5 spitting, you don't want to limit the -- possible -- diseases
6 transferred through saliva. EMS typically has them in their
7 vehicles, and they will put them on the hood -- or around the
8 head and then the neck.

9 Q Were you injured in this struggle?

10 A Yes.

11 Q How were you injured?

12 A Cut up or skinned my hand on the brick taking the
13 individual down. And bruises and scrapes across my kneecaps
14 and my shins.

15 Q Now, an ambulance was called for the defendant, is that
16 correct?

17 A Yes, it is, sir.

18 Q Why was an ambulance called for the defendant?

19 A For his safety.

20 Q And is that because it is standard protocol when you
21 think someone is on drugs? That you take them to an ambulance
22 before you actually take them into law enforcement custody?

23 A Yes, sir.

24 Q I want to talk about surveillance footage. Are there
25 surveillance cameras outside of the Richard Bolling Federal

1 Building?

2 A Yes, sir.

3 Q Were those cameras functioning the morning of March
4 10th, 2016?

5 A Yes, they were, sir.

6 Q Is anyone actively monitoring these cameras at any given
7 point?

8 A Yes, sir. There is a protective security officer, one
9 of the guards on the ground level.

10 Q And so am I correct, and I believe I heard earlier,
11 typically the cameras are rotating back and forth, is that
12 fair to say?

13 A They can be programmed to look at certain areas or
14 certain paths or certain times, turn and basically do a big
15 loop.

16 Q But in any given point, a protective service officer can
17 take control of the camera and focus it on one point, is that
18 right?

19 A Yes, sir. You can manually override it.

20 Q And was there surveillance footage from this incident in
21 question from March 10th, 2016?

22 A Yes, sir.

23 Q Have you reviewed the footage from that morning?

24 A Yes, sir.

25 MR. MCCARTHER: Your Honor, can I approach the

1 witness?

2 THE COURT: You may.

3 BY MR. MCCARTHER:

4 Q I'm handing you what has been previously marked as
5 Government Exhibit 11. Do you recognize that?

6 A Yes, I do, sir.

7 Q And how do you recognize that? That is footage you have
8 reviewed, correct?

9 A Yes, sir.

10 Q And is the footage on Exhibit 11, does that fairly and
11 accurately portray the events that took place on March 10th,
12 2016, at approximately 8:30 in the morning?

13 A Yes, sir.

14 MR. MCCARTHER: Your Honor, at this time I move for
15 admission of Exhibit 11 into evidence.

16 MR. ERMINE: No objection, but I would request a
17 break before we publish it.

18 THE COURT: Okay.

19 MR. ERMINE: It's about 16 minutes of video.

20 THE COURT: Counsel, approach.

21 (THEREUPON; Counsel approached the bench and the following
22 proceedings were held.)

23 THE COURT: Do you need a bathroom break?

24 MR. ERMINE: Yes, sir.

25 THE COURT: Okay. We'll do that.

1 MR. MCCARTHER: Let's just do that. I have more
2 questions after the surveillance video is played, so we should
3 just do it now and then I can play the video and then I can
4 ask the questions.

5 THE COURT: Okay. We'll take about 15 minutes.

6 (THEREUPON; The proceedings returned to open Court.)

7 THE COURT: Ladies and gentlemen of the Jury, we are
8 going to our afternoon recess at this time. We will take no
9 longer than 15 minutes. When we return we will have a video
10 that will be played. So with that said, we will break at this
11 time.

12 (THEREUPON, the following proceedings were adjourned.)

13 (Proceedings began at 4:25 PM)

14 THE COURT: Okay. Mr. McCarter. And I will remind
15 the witness that you are still under oath.

16 MR. MCCARTHER: Thank you, Judge.

17 BY MR. MCCARTHER:

18 Q There is an important question I need to ask. What were
19 you wearing that day when you confronted the defendant?

20 A My FPS uniform.

21 Q Now, did you see Inspector Charles Schwarz this morning?

22 A Yes, I did.

23 Q So what he was wearing would that have been the same
24 type of uniform you were wearing?

25 A Yes, sir.

1 Q And it says police across the front?

2 A I believe, yes. DHS police.

3 Q And so is there anything about that uniform that would
4 lead any one to believe you were anything but a police officer
5 or a police inspector?

6 A There is no way they can confuse that.

7 MR. MCCARTHER: Your Honor, with your permission,
8 may I publish Exhibit 11 to the Jury?

9 THE COURT: You may.

10 MR. MCCARTHER: Thank you.

11 (THEREUPON; Government's Exhibit No. 11 was then
12 published to the Jury in open court.)

13 BY MR. MCCARTHER:

14 Q Allyson, can you do me a favor and rewind it to the
15 beginning and then pause. I don't believe I brought this up
16 during your direct examination, but now that I see the video,
17 the defendant was heading towards you such the point that you
18 had to back up, is that right?

19 A Yes, sir.

20 Q Why did you back up?

21 A I wanted the distance away from the individual.

22 Q And did you back up because it looked like he was coming
23 to actually attack you?

24 A That's what I believed, sir.

25 Q I'd like to play this again but just the first 30

1 seconds or so. Okay. Thank you, Allyson. You can pause it.

2 Were you made away of the vehicle the defendant
3 drove to the location in?

4 A It was during the part where I was holding his feet
5 down, that's when I first heard about it.

6 Q Were you subsequently informed that a firearm was
7 discovered under the front seat of that car?

8 A I was holding his foot down and I heard that.

9 Q And in this clip we have right here, the defendant said
10 he was going to kill you, is that right?

11 A Yes, sir.

12 Q And defendant said something like, I'm going to blow
13 your head off?

14 A I want to knock your head off.

15 Q And while he was on the ground he was reaching towards
16 his waistband, is that your testimony?

17 A Yes, sir.

18 Q And there was a gun located in the car he drove there in
19 about 100 feet away, is that right?

20 A About 100 feet.

21 MR. MCCARTHER: Your Honor, I have no further
22 questions at this time.

23 THE COURT: Thank you. Mr. Ermine, cross.

24 CROSS-EXAMINATION

25 BY MR. ERMINE:

1 Q Your office is located on the second floor of the
2 federal building or was at that time, was what was at the time
3 correct?

4 A Yes, sir.

5 Q And you got a call to come down to the lobby because
6 there was a guy acting very crazy down there, right?

7 A I can't remember the exact call.

8 Q Okay. Ultimately you went down to the lobby and you
9 went outside, correct?

10 A Yes, sir.

11 Q And right when he saw you, he was yelling, right?

12 A Yes, sir.

13 Q And screaming profanity?

14 A Yes.

15 Q And as soon as he saw you he was muttering and yelling
16 threats, wasn't he?

17 A Throwing his arms up, hollering and screaming.

18 Q Okay. Try as you might, he just would not be calmed
19 down, would he?

20 A That is when Inspector Dave Yaden was trying to initiate
21 contact.

22 Q Right. And as we see here, that is when he was taken to
23 the ground, right?

24 A When he went around those barriers kind of went for me.

25 Q Right. So when he is taken to the ground -- and we saw

1 on this video and I think you testified as well, he actually
2 slammed his forehead against the ground, didn't he?

3 A Yes, he did, sir.

4 Q He did that twice, didn't he?

5 A I just recall the first one.

6 Q I think the ground there is concrete, right?

7 A Concrete/brick.

8 Q Ultimately -- well, I should, now, when he was on the
9 ground and you testified that he was reaching for his
10 waistband, correct?

11 A Yes, sir.

12 Q There was no gun found in his waistband, was there?

13 A No, sir.

14 Q When the paramedics arrived as we see on this video, you
15 were still in close proximity to this whole thing, weren't
16 you?

17 A Holding his feet, sir.

18 Q Did you him threaten the paramedics that were on the
19 scene?

20 A I don't recall the paramedics.

21 Q Okay. You wrote a report in this case, didn't you?

22 A I'm sorry?

23 Q You wrote a report in this case?

24 A Yes, I did, sir.

25 Q As part of your training -- we heard a little bit about

1 the training that the FPS officer go through. Part of the
2 training is about report writing, isn't it?

3 A Yes, sir.

4 Q So one of the reasons that you want to write a report is
5 essentially what we are here for today, right?

6 A Yes, sir.

7 Q When you come testify you want to be able to remember
8 something that happen in this case over a year ago, right?

9 A Yes, sir.

10 MR. ERMINE: I'm not going to mark this because I
11 don't plan of admitting it. Can I approach the witness and
12 show him this?

13 THE COURT: Notwithstanding that, and I understand
14 that, why don't we mark it for purposes of the record.

15 MR. ERMINE: I have a sticker handy and I will mark
16 this as Defendant's Exhibit No. 1.

17 THE COURT: And it's typically consecutive. So why
18 don't you mark that as Defendant's Exhibit 100.

19 MR. ERMINE: Yes, Your Honor. I'll mark this
20 Defendant's Exhibit 100.

21 BY MR. ERMINE:

22 Q You testified just moments ago, you don't remember
23 whether he was threatening the paramedics that were there,
24 correct?

25 A I do not recall if he did or didn't.

1 Q Let me show you what I have marked as Defendant's
2 Exhibit 100. Let me ask you first, does this appear to be the
3 report that you wrote?

4 A Yes, it is.

5 Q And so looking at this report does this report refresh
6 your recollection about whether he threatened and EMS that
7 were at the scene?

8 A Yes, I wrote, "I then saw EMS arrive on scene. Then
9 with a stretcher EMS was trying to talk to the suspect and he
10 tried to spit on EMS and making more verbal threats."

11 MR. ERMINE: Nothing further, Your Honor. Thank
12 you.

13 THE COURT: Any redirect?

14 MR. MCCARTHER: One moment, Your Honor.

15 THE COURT: Okay.

16 MR. MCCARTHER: Your Honor, I have no redirect.

17 THE COURT: Okay. Thank you, sir. You can stand
18 down.

19 Ladies and gentlemen of the jury, it is about ten
20 till five and there is no use to attempting to put on another
21 witness. With that said, we are going to adjourn for the
22 evening.

23 I will tell you we will start back up at 9:00
24 tomorrow.

25 With that said, the Court again reminds you of what

1 you were told at the first recess of the Court. Until you
2 retire to consider your verdict you must not discuss this case
3 among yourselves or with others or permit anyone to discuss it
4 in your hearing. You should not form or express any opinion
5 about the case until it is finally given to you decide. Do
6 not do any research or investigation on your own about any
7 matter regarding this case or anyone involved with the trial.
8 Do not communicate with others about the case by any means.
9 Do not read, view, or listen to any newspaper, radio,
10 electronic communication from the Internet or television
11 report of the trial.

12 MS. BALDWIN: All rise. Court is in recess.

13 (THEREUPON, the following proceedings were adjourned.)

14

15 CERTIFICATE

16

17 I certify that the foregoing is a correct transcript
18 from the record of the proceedings in the above-entitled
19 matter.

20

August 11, 2017

21

22

/s/ Denise C. Halasey

23

Denise C. Halasey, CCR, CVR-CM

24

United States Court Reporter

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